
(2018) 02 GAU CK 0066
In the Gauhati High Court
Case No : LA App 3 of 2005

AMULYA MOHAN DAS AND ORS

APPELLANT

Vs

COLLECTOR OF KAMRUP AND ORS

RESPONDENT

Date of Decision : 06-02-2018

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 41 Rule 27](#) -
Land Acquisition Act, 1894., — Section 54, Section 23(2), Section 23(1-A)

Citation : (2018) 02 GAU CK 0066

Hon'ble Judges : Prasanta Kumar Deka

Bench : Single Bench

Advocate : MS.J PURKAYASTHA?SMTIU CHAKRABORTY

Final Decision : Dismissed

Judgement

1. Heard Mr. NN Upadhaya, learned counsel, appearing for the appellants. Also heard Ms. U. Chakraborty, learned counsel, appearing for the

respondent No. 2, the Railway and Ms. K. Phukan, learned Government Advocate, Assam, appearing for the respondent No. 1, the Collector,

Kamrup, Guwahati.

2. Undisputedly, the land measuring 2 Bighas 3 Kathas 14 Lechas out of total land measuring 13 Bighas belonging to the present appellants, is the

subject matter of LA Case No. 4/1991 against the total land acquired measuring 94 Bighas 4 Kathas 14 Lechas by the respondent No. 1, the

Collector, Kamrup, Guwahati for laying down the BG Railway Track from Jogighopa to Guwahati. The present appellants were carrying out the

Brick Kiln Industry over the said land measuring 13 Bighas 2 Lechas which includes the land measuring 2 Bighas 3 Kathas 14 Lechas whereon as

submitted the activities of the Brick Kiln manufacturing process took place. As an ancillary to the said industry the labour quarters were standing

thereon alongwith the chimney and 2 big ponds. The said land was connected to the Highway after the appellants had constructed the motorable

road connecting the same with the Highway. The respondent No. 1, the Collector fixed the rate for compensation of Rs. 59, 500/- per Bigha and

the total compensation against the said acquisition comes to Rs. 2,31,502/- due to the appellants.

3. The said amount was received under objection and thereafter, an application was filed before the Collector, Kamrup, Guwahati for referring the

matter to the reference court within the provision of the Land Acquisition Act, 1894. On the basis of the said reference, the Reference Case No.

26/1994 was registered in the court of the learned Additional District Judge (Ad-hoc), Kamrup at Guwahati which was disposed of vide judgment

and award dated 27.09.2004 thereby enhancing the land value from Rs. 59,500/ to 80,000.00 per Bigha. The said enhancement was directed to

be paid to the appellants alongwith the mandatory provisions including the solatium and 12% interest as additional compensation under Section 23

(2) and 23(1-A) of the Land Acquisition Act, 1894.

4. Being aggrieved and dissatisfied with the judgment and award, the appellants have preferred the present appeal under Section 54 of the Land

Acquisition Act, 1894. The matter was admitted and the records were called for and the matter is taken up for its disposal.

5. Mr. Upadhaya, learned counsel appearing on behalf of the appellants submits that the learned reference court failed to take into consideration

the material piece of evidence i.e. Sale Deed on the basis of which the competent authority fixed the land value at Rs. 59,800/- per Bigha. In

addition to that, the learned court below failed to consider the potentiality of the land and diminishing value of the total land measuring 13 Bighas 2

Lechas as the same was intersected by the Railway Track into two separate plots. Referring to the evidence on record of PW 1, Mr. Upadhaya

submits that the said PW 1 is the Assistant Settlement Officer, who deposed that he is aware with respect to the nature of the land of the appellants

and the said land included and classified as commercial land for which land revenue was much higher in comparison to other classes of land.

6. It is pertinent to mention here that a joint inspection was carried out for ascertaining the damage sustained to the appellants at the initiation of the present appellants by the competent authority alongwith the representative of the respondent No. 2, the Railway. The said report was submitted

wherein the PW 1 was one of the signatories. As per the said report, it was deposed by the said PW 1 that the said land measuring 13 Bighas 2

Lechas is a compact plot and the plinth of the petitioner's Brick Kiln Industry is at a distance of four feet and six feet of either side of the Railway

Track. In his cross-examination, the said PW 1 deposed that the said land is on the outskirts of village Chakradeo and human settlement are at a

distance of half furlong from the said land.

7. PW 2, the Lat Mandal who visited the spot alongwith PW 1 deposed that the Railway Track passes through the 13 Bighas of land covered by

the Brick Kiln Industry. He also deposed that PWD Road runs from village Pamohi to village Chakradeo and Brick Kiln Industry is about one

furlong away from the PWD Road. While traveling from the main Road, one has to travel from the public Road for some distance. PW 4, the LDA

of the Land Acquisition Branch under the Collector, Kamrup, Guwahati, deposed that the Collector fixed the value of the land at Rs. 59,800/- per

Bigha. While determining the said value, the Collector has considered 3 Sale Deeds of 1988, 1990 and 1991 respectively. The classifications of

the said land covered by the said three Sale Deeds are varying to each other. One of the classification is 'Na-ba' meaning thereby newly

developed plot of land for residential purpose and on the other hand, rest of the land covered by two Sale Deeds are unclassified. He admitted the

classification of the land as deposed by the PW 1.

8. In the cross-examination, he further deposed that he cannot say on what basis the land value was fixed. However, he supported again in his

cross-examination that Ext. 4 has been based on three varying Sale Deeds pertaining to the years of 1988, 1990 and 1991. He further deposed in

the cross-examination that the said value of land was calculated by taking the average value of the land of the said three Sale Deeds. However,

Mr. Upadhaya submits that admittedly the Brick Kiln Industry was running at the relevant point of time when the process and subsequent

acquisition had caused loss to the appellants inasmuch as the land was

intersected by the said Railway Track and leaving 60 meters from the Railway Track, no residential house nor any industries are permitted to be raised and as such the said land has become unusable from the point of view of the appellants. In addition to that, one of the appellants as one of the witnesses, relied two sale Deeds, one for an area of 5 Lechas, which was sold at a consideration of Rs. 10,000.00 and the other one measuring 1 Katha 10 Lechas at a consideration of Rs. 65,000/- prior to the notification for acquisition.

9. Summing up, Mr. Upadhaya submits that the learned court below ought to have calculated the land value at Rs. 1,25,000.00 per Bigha not only on the basis of sale Deeds produced by the appellants but alongwith the one which was taken into consideration by the Collector himself while fixing the same at Rs. 59,800/- The learned reference court was wrong in not considering the Sale Deeds which the Collector considered instead of raising the value of land to Rs. 80, 000.00 per Bigha on the basis of the two Sale Deeds submitted by one of the appellants. On a specific query, Mr. Upadhaya submits that regarding loss faced by the appellants owing to sudden closure of the Industry the appellants could not produce the relevant documents though the same were in the custody of the Assistant Settlement Officer (ASO) during the joint inspection.

However, some amount was stated in the reference petition with regard to the loss sustained owing to the acquisition. Mr. Upadhaya accordingly submits that even if the court assumed that the land value was rightly enhanced by the reference court but though it was admitted that there was standing jirat in the form of standing structure, the same ought to have been compensated after taking into consideration by the reference court. He also stated that leave be granted to bring on record the said document supporting the claim of the standing jirats over the land so acquired.

10. Ms. Chakraborty, on the other hand opposed the whole submission of the learned counsel appearing for the appellants inasmuch as the reference court has rightly assessed the value of the land and allowed the reference by enhancing the same to Rs. 80,000.00 per Bigha. On the point of standing jirat, Ms. Chakraborty submits that there were no materials on record at least in order to compensate the appellants on the said head.

11. Considered the submissions of the learned counsels. It is true that there cannot be any straight jacket formula to calculate the value of the land

of appellants which differs on various criteria prominent amongst them, the potentiality of the land. As per the guidelines of the Hon^{ble} Apex

Court same could be assessed with respect to its nearness from the PWD Road/ Highway, its nearness to the township, market and the likewise.

In the present case in hand, Mr. Upadhaya submits that the materials placed before the reference court shows that land of equal potentiality was

sold at a much higher price prior to the date of Notification in the year, 1991. However, the said submission cannot be considered inasmuch as the

learned court below has compared the said land and held that the land sold is far away from the one that was acquired.

12. On the other hand, from the evidence of PW 2, it is clear that the said land is not nearby the PWD Road inasmuch as PW 2 deposed that

while traveling to the Brick Kiln Industry from the main Road, one has to take public Road to some distance. However, the learned reference court

has considered its potentiality and enhanced the value of the land from Rs 59,800.00 to Rs. 80,000.00 per Bigha. So far the other compensation is

concerned with regard to the loss sustained by the appellants, the learned court below has not misdirected itself inasmuch as while going through

the record, this court finds that not a single piece of paper is on record to show as to the earnings of the appellants from the said Brick Kiln

Industry, not to speak of the daily production capacity of the Brick Kiln Industry to manufacture bricks. Under such circumstances, the reference

court cannot guess work in order to compensate for the sustainable loss appellants had to face. It is on record that the appellants are having more

land within the vicinity of the land so acquired. The learned court below considered the report, the Ext. 1 proved by PW 1, the then SDC,

Palashbari Revenue Circle. From the report the learned court below came to the conclusion that there exists only one thatched house as office or

Manager's residence and kuchha road from PWD Road reaching to the Brick Kiln Industry.

13. Considering the said piece of evidence, the learned court below came to the conclusion that the report i.e. the Ext. 1 does not support the

claim of the PW 8, one of the appellants in his application that they had to incur loss of more than Rs. 8,00,000.00. It is also held by the learned

court below that PW 8 has not exhibited a single document in support of his claim regarding quantum of damage, loss etc. suffered by him as a result of acquisition.

14. Keeping in view of the findings of the learned court below, the submission of Mr. Upadhaya to file petition under Order 41 Rule 27 of the

CPC for adducing additional evidence cannot be considered because the joint Inspection report i.e. the Ext. 1 has been duly proved by PW 1 and

considered by the reference court. Moreover, documents though in the custody of the appellants which are not placed before the reference court,

cannot be permitted to be filed as a piece of additional evidence inasmuch as same would amount to filling up of lacunae which cannot be permitted

within the four corners of Order 41 Rule 27 of CPC.

15. At the fag end, it was pointed out by Mr. Upadhayay that the original appellant Amulya Mohan Das and Utsab Mohan Das had died. Out of

the said two appellants, the latter one died issueless. However, the names of the legal heirs of Amulya Mohan Das are substituted on record vide

order dated 8.8.2013 passed by this court. Accordingly, the amount so due to the appellants are entitled by the recorded legal heirs of Amulya

Mohan Das. Mr. Upadhaya further submits that the enhanced amount by the reference court has not yet been disbursed by the competent

authority. Accordingly the said amount as per the judgment and award/decreed of the reference court is to be paid to the appellants within a period

of two months as per the applicable interest mentioned therein.

16. Considering the same, I find that there is no merit in this appeal and the same is accordingly dismissed. Send back the LCR.