
(2004) 06 JH CK 0037
In the Jharkhand High Court
Case No : AFOD No. 181 of 1989 (R)

Arun Chandra Sao and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 25-06-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 18(2), 23, 4(1)

Citation : (2004) 4 JCR 379b

Hon'ble Judges : Vishnudeo Narayan, J

Bench : Single Bench

Advocate : D.C. Ghose and Achinta Sen, for the Appellant; SC I, for the Respondent

Final Decision : Dismissed

Judgement

Vishnudeo Narayan, J.—This appeal at the instance of the appellants has been preferred against the impugned judgment and award dated 25.1.1989 and 9.2.1989 respectively passed in Land Acquisition Reference Case No. 63 (53) of 1986 by Shri Alok Kumar Sinha, 1st Sub-Ordinate Judge, Chaibasa whereby and whereunder the claim of the applicants was disallowed and the award made by the Collector was affirmed.

2. The State of Bihar (now Jharkhand) had acquired 5.82 acres of land of Village - Ghoradhuan, Police Station-Ghatsila. District -Singhbhum, Chaibasa for Sawarnrekha Project vide notification dated 1,2.1981 u/s 4 of the Land Acquisition Act (hereinafter referred to as the said Act) in Land Acquisition Case No. 160 of 1980-81 and the declaration u/s 6 of the said Act was also published on 7.3.1981 and both the notifications were published in the district Gazette. Thereafter, notice u/s 9 of the said Act was issued to the appellant in respect of the land under acquisition on 8.3.1981. Plot No. 247 appertaining to Khata No. 26 having an area of 3.80 acres of the appellants, was the subject matter of acquisition for the said Sawarnrekha Project besides other land of the different rafyats of the said village. Award No. 1 in respect thereof for the acquisition of

the land of the appellants @ Rs. 400/- per acre along with other consequential reliefs was made on 31.3.1982 for the total amount of Rs. 1.842.30 which was received by the appellants on 18.9.1982 under protest. The Land Acquisition Authorities has assessed the compensation (r) Rs. 12.000/-, Rs. 9600/-, Rs. 6000/-, again Rs. 6000/-. Rs. 1800/- and Rs. 600/-in respect of Done 1. Done 2, Done 3, Gora 1. Gora 2 and Gora 3 land respectively on the basis of the reports of the Settlement Officer. Dhalbhumgarh in. the absence of any sale deed of the said relevant period. The land under acquisition of the appellants was found to be stony land and its compensation was assessed @ Rs. 400/-per acre. Delivery of possession of the land under acquisition of the appellants was also taken.

3. The appellant filed an application on 8.11.1982 u/s 18 of the said Act before the Special Land Acquisition Officer, Singhbhum. Chaibasa in respect of the award aforesaid which was referred to the Land Acquisition Court u/s 19 of the said Act and it gave rise to LA Reference Case No. 63 (53)" of 1982-83.

4. The case of the appellant is that the compensation of the acquired land is inadequate and is much below the prevailing market price and the prevailing market price of the land under acquisition on the date of the notification was Rs. 80.000/-per acre and the Land Acquisition Authorities have wrongly classified the land under acquisition as stony land. It is alleged that the said land under acquisition is a paddy field and the appellants after huge expenditure and labour has improved the said land having a yield of 30-35 mounds of paddy per acre and there is also facility of irrigation of the said land from the nearby Nala, it is also alleged that the said land is near the National Highway No. 32 and it is located very near to Dhalbhumgarh where there are rice mills, oil mills, aluminum factory and it is a developed business place and town of Ghatshila is only about eight kilometers from the said land. It is alleged that the appellants had annual income of Rs. 3000/- after deducting the cost of cultivation from the land under acquisition and considering the location and nature of the land and its important, the assessment of compensation has not been properly made.

5. The opposite party-respondent did not file any rejoinder to the reference petition of the appellants.

6. The learned trial Court had formulated a point for adjudication which is as to whether the amount of compensation awarded to the petitioners (appellant) is adequate or not and whether the award requires any interference.

7. The learned trial Court in view of the evidence oral and documentary on the record and read with the provision of Section 18 of the said Act has held that the petition filed u/s 18 of the said Act for referring the dispute to the Civil Court is barred by limitation under clause (b) to the proviso of sub-section (2) of Section 18 of the said Act. The learned Court below has further held that the petitioners (appellants) cannot be allowed compensation even at the rate of more than Rs. 1800/- being Gora 2 land besides other benefits as provided under the said Act in view of the fact that the reference application itself is time barred u/s 18(2)

proviso (b) and they cannot be allowed any relief and the award made by the Collector cannot be interfered with.

8. Assailing the impugned judgment it has been submitted by the learned counsel for the appellant that on reference having been made by the Collector, the Court had no jurisdiction to question the validity of that reference and is bound to decide the matter on merits and it is for the Collector to determine whether to make a reference u/s 18(1) and if he decides to make a reference it is not open to the Court to go behind the decision of the Collector and to hold the reference to be out of time and the learned trial Court has committed a manifest error in his finding that the reference is barred by limitation by misconstruing the provision of Section 18 of the said Act. It has also been submitted that in the absence of the notice making the award by the Collector as well as in absence of receipt of notice u/s 12(2) of the said Act, the limitation will run from the date of knowledge of the award and the application u/s 18 of the said Act can be filed within six months from the date of knowledge of the award and in this case, the appellants came to know of the award on 18.9.1992 when the compensation was received by them under protest and thus, the reference made by the appellants is not barred by limitation. It has also been contended that the learned trial Court has further committed a serious illegality in deciding the quantum of compensation and the reasons assigned by the Court below is absolutely against the evidence on the record and in this view of the submissions of the learned G.P. agreeing for the award of compensation @ Rs. 1800/- per acre, the compensation ought to have been allowed at least @ Rs. 1800/- per acre to the appellant along with the solatium and interest in accordance with law. In support of his contention reliance has been placed upon the ratio of the case of State of Uttar Pradesh Vs. Sri Abdul Karim,

9. In contra, the learned Standing Counsel Land Acquisition has very fairly submitted that classification of the land of the appellants under acquisition as stony land by the land acquisition authorities is in conflict with the survey records of right which shows that plot No. 247 is Gora-2 land and the land acquisition authorities as per Ext. A have assessed the prevailing market price of Gora-2 land @ Rs. 1800/-per acre and as such the compensation of the land under acquisition of the appellants may be determined @ Rs. 1800/- per acre as it is purely an agricultural land having no other potentialities provided this Court comes to the finding that the reference is not barred by law of limitation as envisaged u/s 18 of the said Act.

10. There is no denying the fact that the land of the appellants situate in Village-Ghoradhuan, Police Station- Ghatsila. District-Singhbhum Chaibasa was acquired by the respondent State vide notification dated 1.2.1981 u/s 4(1) of the said Act which was published in the district Gazette and declaration u/s 6 was also published in the district Gazette on 7.3.1981 in respect thereof. There is also a notification u/s 9 of the said Act, on 8.3.1981. It is an admitted fact that the appellants are the raiyats of the land under acquisition and they stand recorded

in respect thereof in the survey records of right. The respondent State had made classification of the land under acquisition as stony land. This classification is definitely against the survey records of right, which depicts the land under acquisition as Done-II land. The case of the appellants is that compensation assessed in respect of the land in question is very low and is inadequate and not in accordance with the market rate prevailing in the area on the day of the notification u/s 4 of the said Act and the compensation assessed by the respondent State is also not based on any legal and relevant document and according to them the prevailing market price of the land under acquisition being Done-II land is Rs. 80.000/- per acre and there is also no rational for the respondent State to determine the rate of awarding compensation of the land under acquisition @ Rs. 400/" per acre. It has been settled by plethora of judicial pronouncements of this Court as well as the Apex Court that the compensation should be paid to the claimant of the land under acquisition taking into consideration the market value of the land on the date of publication of the notification u/s 4(1) of the said Act. In the case of Suresh Kumar v. Town Improvement Trust Bhopal 1989 BLJR 21 (SC). it has been observed by the Apex Court that "it is true that the market value of the land acquired has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirers nor undue deprivation on the part of the owner. Section 23 of the Act enumerates the matters to be considered in determining compensation. The first to be taken into consideration is the market value of the land on the date of publication of the notification u/s 4(1), The market value is that of a village vendor and a willing purchaser, A willing vender would naturally take into consideration such facts as would contribute to the value of his land including its unearned increment. A willing purchaser would also consider more or less the same factors. There may be many ponderable and imponderable factors in the such estimation or guess work. Section 24 of the said Act enumerates the matters which the Court shall not take into con-" sideration in determining compensation. Section 25 provides that the amount of compensation award by the Court shall not be less than the amount awarded by the Collector u/ s 11. It is an accepted principle that the land is not to be valued, merely by reference to the use to which it has been put at the time at which its value has to be determined i.e. on the date of the notification u/s 4, but also by reference to the use to which it is reasonably capable of being put in the future. A land which is certainly or likely to be used in the immediate or reasonably near future for building purposes but which at the valuation is waste land or has been used for agricultural purposes, the owner, however willing a vendor he is, is not likely to be content to sell the land for its value as waste or agricultural land. as the case may be. The possibility of its being used for building purposes would have to be taken into account. It is well established that the special, though natural, adaptability of the land for the purpose for which it is taken is an important element to be taken into consideration in determining the market value of the land. In such a situation, the land might have already been valued as more than its value as agricultural land if it has any other capabilities. In sum, in estimating

the market value of the land or all of the capabilities of the land and or all its legitimate purposes to which it may be applied or for which it may be adapted are to be considered and not merely the condition it is in and the use to which it is at the time applied by the owner. The proper principle is to ascertain the market value of the land taken into consideration the special value which ought to be attached to the special advantage possessed by the land namely its proximity to develop urbanized areas." in the case of Shambhu Nath and Ors. v. State of Bihar 1989 PUR 676, it has been observed that the compensation should be paid taken into consideration various factors including the location, importance, prospect and purpose of the land sought to be acquired and the location of the land takes it out from the purview of agricultural land. In the case of Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, the Apex Court has observed that the market value of land must be determined as on crucial date of publication of notification u/s 4 and has also prescribed general guidelines therein to be applied with understanding informed with common sense.

11. Now on the basis of the oral and documentary evidence on the record coupled with the guidelines referred to above, the marked value of the "land under acquisition prevailing on 1.2.1981 i.e. the date of notification u/s 4 of the said Act has to be ascertained for payment of just and adequate compensation to the appellants. It is essential to mention at the very outset that the land acquired in this case is in Village- Ghoradhuan which is a remote village devoid of any modern facility. There is averment in para-5 of the reference petition that the town of Ghatsila is at a distance of eight kilometers from the land under acquisition. AW 2, the applicant, has deposed that Dalbhumgarh is very near to his village where there are rice and oil mills as well as aluminum factory and Police Station. AW 2, the appellant in his evidence has also deposed that the land under acquisition is situated by the side of NH 32 and village Ghoradhuan and Dhalbhumgarh are adjacent villages. He has also deposed that village Ghoradhuan is at a distance of only two kilometers from Ghatsila. The evidence of AW 2 that his village Ghoradhuan is situated at a distance of two kilometers from Ghatsila is incorrect and false in view of the averments made in the reference petition referred to above. In para-4 of his cross-examination he has deposed that there is no municipality or local Board at Dhalbhumgarh. AW 2 has further deposed that prevailing market price of the land under acquisition in Rs. 80,000/- per acre. Similar is the evidence of AW 1, AW 3, AW 4 and AW 5. The evidence of the aforesaid witnesses is also unreliable for the reasons stated above in respect of evidence of AW 2. AA 3 has admitted in para-6 of his evidence that there is neither Block Office, Police Station, High School nor any Government Office in village Ghoradhuan and the office of the Swarnrekha Project has been established there after the acquisition. AW 5 has also deposed in para-10 of his evidence that about four or five years ago, Aluminum Factory was set up at Dhalbhumgarh and the rice and oil mills belonged to Gopal and Murari Lal Agarwal respectively. It, therefore, appears from his evidence that the

aforesaid Aluminum Factory, rice mill and oil mill have been set up at Dhalbhumgarh much after the acquisition of land in question. It, therefore, appears that the land under acquisition is an agricultural land having no urbanized facility and it has no proximity to develop urbanized, area being eight kilometers away from Ghatsila and as such it is voided of any other potentialities and thus its prevailing market price on the relevant date has to be assessed considering the land under acquisition as purely agricultural Gora-II land. Ext. 2 is the registered sale deed dated 16.10.1974 in respect of four decimals of land of Village-Kokpara Narsingharh, Police Station-Dhalbhumgarh for Rs. 2000/-. This village is within Police Station-Ghatsila. A portion of plot No. 623 has been sold by the said sale deed and in its western boundary there is a road. It is relevant to mention here that the land under acquisition of village Ghoradhuan is within Ghatsila Police Station which is at a considerable distance from village Kokpara Narsingharh. Furthermore, the nature of the land of plot No. 623 has not been disclosed in Ext. 2. The land under acquisition has been acquired as per notification u/s 4 of the said Act dated 1.2.1981, Therefore, the relevant sale deed within three years prior to the date of said notification is only relevant for determining the prevailing market price of the acquired land. DW 1 has deposed that there was no sale deed of village Ghoradhuan available in the registration office of the period within three years prior to the notification u/s 4 of the said Act. Therefore, Ext. 2 cannot form a proper rationale for determining the prevailing market price of the land under acquisition on the relevant date of the notification u/s 4 of the said Act. The learned Court below has rightly did not rely upon Ext. 2. Ext. 3 is the certified copy of the Judgment of Land Acquisition Court. Chaibasa of Land Acquisition Case No. 42 (36) of 1985. Five decimals of plot No, 700 appertaining to Khata No. 33 of Village Moubhandar, Police Station-Ghatsila was acquired in the month of March 1981 and the claimant was awarded compensation of Rs. 160.50 for the said land as per the valuation @ Rs. 3210/- per acre. In view of the evidence in that case, the Land Acquisition Court assessed the prevailing market price on the date of the acquisition @ Rs. 60.000/- per acre and the compensation was allowed at that rate to the claimant of the said case. It appears from perusal of Ext. 3 that the said land was situated by the side of the Guest House, Club, Golf ground of Hindustan Copper Company Ltd. besides there was Hindustan Copper Factory, Hospital and residence of SDO. Dy. S.P. and other officers. It, therefore, appears that the land under Ext. 3 has urbanized potentialities, Therefore, Ext. 3 is of no help to the appellants in this case as stated above. The land under acquisition is in a remote village having no urbanized facility or any other potentialities except it is an agricultural land. It, therefore, appears that there is no legal evidence on the record to establish the fact that the prevailing market price of the land under acquisition in this case was -Rs. 80,000/- per acre on the date of its notification u/s 4 of the said Act. The land acquisition authorities has, therefore, correctly assessed the prevailing market price of the land under acquisition as per the report of the Settlement Officer based on the yield of the said land and has determined the market price of Gora-II land @ Rs. 1800/- per acre. In view of the submissions made by the

learned GP before the trial Court as mentioned in the impugned judgment, I hold that the prevailing market price of the land of the appellants under acquisition on the date of notification u/s 4 of the said Act is assessed @ Rs. 1800/- per acre.

12. Now a pertinent question arises as to whether the appellant is entitled to get the compensation of land under acquisition @ Rs. 1800/- per acre and here comes the question of limitation. I mention once again at the cost of the repetition that award No. 1 Rs. 400/- per acre of the land under acquisition in LA Case No. 42 (36) of 1985 was made by the Collector on 31.3.1982 (Ext. A) and the appellants have admittedly received the compensation amount under protest on 18.9.1981. There is no material on the record to show as to when notice from the Collector u/s 11(2) of the said Act was received by the appellant. The reference was made by the appellants on 8.11.1982 before the Land Acquisition Authorities. For proper appreciation Section 18 of the said Act is quoted below :-

"18. Reference to Court.-(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons, to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken :

Provided that every such application shall be made.-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other case within six weeks of the receipt of the notice from the Collector u/s 12, sub-section (2), or within six months from the date of Collector's award whichever period shall first expire."

It, therefore, appears from Section 18 aforesaid that any person aggrieved by the award of the Collector regarding inadequacy of the compensation may be written application to the Collector refer the matter for adjudication by the civil Court which has to be presented to the Land Acquisition Authorities within six weeks from the date of Collector's award or of the receipt of the notice from the Collector u/s 18(2) or within six months from the date of the Collector's award whichever period shall first expire. There is no evidence on the record brought by the respondent as to whether the appellant was represented before the Collector at the time of making of the award as well as date of the receipt of the notice u/s 12(2) of the said Act by the appellant. Therefore, the question of the period of limitation of six weeks has no application in this case. Therefore, the question of the period of limitation of six weeks has no application in this case. Therefore, the period of six months from the date of the Collector's award shall have its

application in this case for filing of the reference u/s 18 of the said Act. The award has been made in this case on 31.3.1982 and the reference u/s 18 of the said Act has been made on 8.11.1982 and as such the reference is barred by limitation as per the provision u/s 18(2) of the said Act. The submissions of the learned counsel for the appellant is solely based upon the ratio of the case of State of Uttar Pradesh through the Collector Nainital (supra) in which it has been observed that in a reference u/s 18, the District Judge cannot go into a question that the application for reference was not made to the Collector within the time prescribed by Section 18(2) of the said Act. The said ratio has been overruled by the Apex Court in the case of Mohammed Hasnuddin Vs. State of Maharashtra, . and it was observed by the Apex Court therein which runs thus :-

"Merely because the Collector while making an award u/s 11 or in serving a notice on the owner of the land u/s 12, acts as an agent of the Government, it does not necessarily imply that while making a reference to the Court u/s 18, he acts in the capacity of an agent of the Government. Section 18(1) entrusts to the Collector the statutory duty of making a reference on the fulfilment of the conditions laid down therein. The Collector, therefore, acting u/s 18, is nothing but a statutory authority exercising his own powers under the section.

The fulfilment of the conditions, particularly the one regarding limitation, are the conditions subject to which the power of the Collector u/s 18 to make the reference exists. The making of an application for reference within the time prescribed by proviso to Section 18(2) is a sine qua non for a valid reference by the Collector.

The Court functioning under the Act being a tribunal of special jurisdiction, it is its duty to see that the reference made to it by the Collector u/s 18 complies with the conditions laid down therein so as to give the Court jurisdiction to hear the reference. In,, deciding the question of Jurisdiction in, a case of reference u/s 18 by the Collector to the Court, the Court is certainly not acting as a Court of appeal; it is only discharging the elementary duty of satisfying itself that a reference which it is called upon to decide is a valid and proper reference according to the provisions of the Act under which it is made. That is a basic and preliminary duty which no tribunal can possibly avoid. The Court has, therefore, jurisdiction to decide whether the reference was made beyond the period prescribed by the proviso to subsection (2) of Section 18 of the Act. and if it finds that it was so made, decline to answer reference."

In view of the ratio aforesaid of the Apex Court, the matter stands settled finally and the Court exercising the powers under the said Act has its duty to see that the reference made to it by the Collector u/s 18 complies with the conditions laid down therein so as to give the Court jurisdiction to hear the reference. Therefore, the learned Court below was competent to decide the question of limitation involved in the reference made u/s 18 of the said Act and the learned Court below has rightly come to the finding that the reference is barred by limitation as per the provision contained u/s 18(2) proviso (b) of the said Act. I,

therefore, see no illegality regarding the finding arrived at by the learned Court below. The said finding of the learned Court below is based upon the settled position of law of the Apex Court. It is matter of regret that an overruled ratio has been referred to by the learned counsel for the appellant. I see no illegality in the impugned judgment requiring an interference therein.

13. There is no merit in this appeal and it falls. The appeal is hereby dismissed with cost. The impugned judgment of the learned Court below is hereby affirmed.