(2004) 09 JH CK 0064

In the Jharkhand High Court

Case No : A.F.O.D. No. 210 of 1995 (R)

Ban Bihari Mahto and Others — APPELLANT

Vs

State of Bihar — RESPONDENT

Date of Decision : 02-09-2004

Acts Referred:
Land Acquisition Act, 1894 — Section 18

Citation : (2004) 4 JCR 475

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : R.P. Gupta, for the Appellant; Md. Shamim Akhtar, SC-II and Arbind Kumar Mehta, JC to SC-II, for the Respondent

Final Decision : Allowed

Judgement

Hari Shankar Prasad, J.—This appeal at, the instance of the appellants is directed against the judgment dated 15.7.1995 and the Award dated 4.8.1995 whereby and whereunder the learned Subordinate Judge-1, at Seraikella dismissed the reference made by the Special Land Acquisition Officer. Subarnarekha Dam Project. Chandil u/s 18 of Land Acquisition Act, on the ground that valuation of the land in question in respect of Award No. 520 is just and proper.

2. Pursuant to the notification u/s 4 of the Land Acquisition Act published in the District Gazette on 1.1.1987, the land measuring 9.77 acres area of plot No. 912 appertaining to Khata No. 164 of village Dayapur was acquired. Valuation of the tank was assessed at Rs. 27,591,72 paise and appellant accepted the amount of award with protest assessed u/s 11 of the Land Acquisition Act. On protest, the matter was referred u/s 18 of the Land Acquisition Act and thereafter L.A. Case No. 56 of 1991 was filed. Thereafter the learned Land Acquisition Judge, after recording evidence of witnesses produced on behalf of the appellant and after examination of witnesses produced on behalf of the State, came to a finding that the amount of compensation as assessed u/s 11 of the Land Acquisition Act has been properly made and no enhancement is required and thus, dismissed the

suit.

3. Learned counsel appearing for the appellants submits that the tank spread over an area measuring 9,77 acres, has been acquired and the tank always remains submerged with water. It is also submitted that fish is reared from the tank to the tune of Rs. GO-70,000/- per year. He further submits that crops and vegetables are grown in the nearby field by using water of the tank and thus. the annual income from the production of crops and vegetable is Rs. 25,OOO/-. Learned counsel further pointed out that annual income from irrigation and fishing should not have been assessed less than nine lakh. On the other hand. learned counsel for the respondent submitted that assessment has properly been made, that is why on reference u/s 18 of the Land Acquisition Act, the learned Land Acquisition Judge did not enhance the valuation assessed by the collector and dismissed the reference.

4. Five witnesses have been examined on behalf of the appellant and evidence of all the five witnesses is more or less the same and they have stated that from the tank which is spread over an area of 9.77 acres of land, nearby lands are irrigated making it more fertile and huge earning is made from growing of crops and vegetables. They have also stated that Rs. 60-70.OOO/- per year is earned from the fishing because it is a huge tank and round the year, fishes are reared giving earning of Rs. GO-70.000/- per year besides employment to several other persons.

5. On the other hand, only one witness has been examined on behalf of the respondent O.P.W 1 is Amin. He measured the pond and other lands of village before 17.12.1986. According to him, pond''s plot No. is 912, Khata No. 164 measuring area 9.77 acres. The length of the tank is 866 ft., width is 450 ft. and depth is 5 ft.

6. Ext. 1 is a certified copy of Khatiyan of Khata No. 164 which is recorded in the names of Manshukh Mahto and others. The learned Special Judge while appreciating the evidence of the witnesses, both oral and documentary, has come to the finding that there are discrepancies in the statement of witnesses about the annual income from the fishing from the pond as some witnesses have stated that annual income is 70-80.OOO/- and some witnesses have stated that annual income is only 70.000/-. On this score, the learned Court below has come to the finding that there is no reliable piece of evidence, so far as annual income is concerned. It has also mentioned that though, figure of annual income from the pond is maintained but it has not been brought on record. But the question is, '' when this is a big tank and it is spread over an area of 9.77 acres of land, it is but natural that this pond must be utilized for fishing for the sale of fishes in the market because witnesses have at least stated that fishes are reared in pond besides water is utilized for irrigation of nearby land. If the land was acquired in the year 1986 and figure of annual income is not maintained, in that circumstance, the witnesses and the owner will not be able to say as to what is the annual income from the pond,

7. From the discussions made above, I am of the view that since the pond is spread over an area of 9.77 acres of land and even if the statement of witnesses about the annual Income from the sale of vegetable and crop and fishing from the pond is disbelieved, still there is every possibility of earning annual income of Rs. 75.000/- from fishing. In that view of the matter, I enhance the amount of compensation from Rs. 27.000/- and odd to Rs. 75.000/- together with solution at the rate of 30% to the compensation amount and 9% of Interest as required under provisions of Land Acquisition Act from the date of reference till the date of Award.

8. This appeal is allowed with the above modification in the Award.

