

(2010) 07 PAT CK 0181
In the Patna High Court
Case No : CWJC No. 5616 of 2006

Braj Kishore Roy	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 06-07-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 4(1), 6, 9

Citation : (2013) 1 PLJR 364

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Advocate : Nageshwar Prasad Sinha and Umesh Kumar Verma, for the Appellant; Anshuman Singh for the State, Devendra Kumar Sinha and Vijay Kumar Sinha for the Railways, for the Respondent

Judgement

Sheema Ali Khan, J.—Learned counsel for the petitioners is permitted to add the East Central Railway through its Divisional Manager, Maldah as party respondent in the four writ petitions. These writ petitions have been filed for issuance of a writ of mandamus for payment of the award amount as fixed by the Land Acquisition Officer, Banka and further challenging the redetermination of the valuation of the land by the Divisional Commissioner/State Government to the detriment of the petitioners.

2. The land of the petitioners were notified u/s 4(1) of the Land Acquisition Act on 30.5.2003, declaration u/s 6 was issued on 9.6.2009 and final notice was issued to the petitioners u/s 9 of the Act. The Land Acquisition Officer thereafter fixed the amount that was to be paid in lieu of the acquisition of the land of the petitioners estimated at Rs. 1,73,028.82 per acre. After fixing the valuation the matter was sent for approval to the State Government as per letter no. 416, dated 20.4.1985 of the Revenue and Land Reforms Department which requires that where price of the land purported to be acquired is above Rs. 5 lakhs or more, it would require the approval of the State Government. Accordingly, by letter dated 6.8.2004 the rate fixed for the land was sent for approval by the

Commissioner, Bhagalpur who forwarded the matter to the Director after examining the same. Annexure-A indicates that the Commissioner considered over forty sale deeds and fixed the rate at Rs. 13 lakhs and odd per acre. The amount was finally approved and sanctioned by the Under Secretary of the Department vide letter no. 788, dated 13.3.2006. The petitioners received the award amount with protest.

3. The petitioners have come to this court challenging the decision of the State Government in reducing the amount without giving them the opportunity of being heard in the matter and also on the ground that the provisions of Section 23 of the Act and paragraphs 72 and 76 of the Executive Instructions have not been followed while fixing the rate of the land.

4. Section 23 of the Act specifically provides the manner in which the compensation amount is to be determined. It requires that while determining the amount of compensation to be awarded for the land acquired, amongst others the market value of the land on the date of publication of notification u/s 4(1) ought to be taken into consideration. The petitioners' claim is that redetermination of the award amount has been made without taking into consideration the market value of the land on the date on which the notification has been issued. The Executive Instruction further deals with the manner in which the valuation ought to have been done.

5. Annexure-B to the supplementary counter affidavit is letter of the State Government, dated 20.4.1985 which envisages that where the award amount has been fixed at more than Rs. 5 lakhs per acre, the records of such matter be sent to the State Government for its approval. Unfortunately, in these cases the Commissioner has fixed the amount at his own level and forwarded the matter to the State Government. In fact what ought to have been done was that the records with respect to fixation by the Land Acquisition Officer with the opinion of the Commissioner should have been sent to the State Government for review/approval so that the Government could form its own independent opinion regarding the propriety of fixing the rate of award.

6. In any event the petitioners who are the landholders and awardees in the land acquisition proceeding have been given the right to challenge the amount of award fixed by the Land Acquisition Officer by exercising their right u/s 18 of the Act. Section 18 of the Act clearly envisages that a person interested and who has not accepted the award may by a written application before the Collector require that the matter be referred by the Collector for determination of the court, whether it may be regarding the objection with respect to the measurement of the land, the amount of compensation, a person to whom it is payable or the apportionment of the compensation amount amongst the persons interested within a period of six weeks. In these cases the petitioners have accepted the award amount under protest. In the meantime they have filed the present writ petitions challenging the fixation made by the Commissioner. Thus, in a manner they have made protest and are pursuing legal remedy for redressal of their

grievances.

7. In the facts aforesaid the petitioners would have the liberty to file an application before the Collector, Banka who shall refer it to the civil court for settlement of the dispute with respect to the amount of compensation to be awarded. The petitioners should also file an application for condonation of delay. The Collector will condone the delay considering the observations of the court that the manner in which the redetermination has been made by the Commissioner is not envisaged in the 1985 letter, the Executive Instruction and also because of the fact that the petitioners were pursuing their legal remedy.

8. The application for reference u/s 18 alongwith the limitation petition should be filed within a period of six weeks from the date of receipt of a copy of this order. The Collector should dispose of the limitation petition by passing an appropriate order as indicated above and send the matter for reference within six weeks from the date of receipt of the petition filed on behalf of the petitioners. These writ petitions are disposed of with the aforesaid observations and directions.