

(2004) 11 OHC CK 0038
In the Orissa High Court
Case No : First Appeal No. 30 of 1993

Buli Bastia (Dead), by her L.R. Rama Chandra Bastia	APPELLANT
Vs	
Dulei Das and Others	RESPONDENT

Date of Decision : 02-11-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 4, 54

Citation : (2005) 99 CLT 266 : (2005) OLR 312 Supp

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

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

Final Decision : Allowed

Judgement

P.K. Tripathy, J.—This appeal u/s 54 of the Land Acquisition Act, 1894 (in short, "the Act") has been filed by the claimants as against the award passed by the Sub-ordinate Judge, Second Court, Cuttack on 29.9.1992 in L.A. Misc. Case No. 5 of 1986. The other persons who are initially assessed to the compensation are Respondent Nos. 1 to 9 (being Opp. Party Nos. 1 series and 2 to 6 in the Court below) and the L.A. Collector, Guttack is Respondent No. 10 (being Opp. Party No. 7 in the Court below).

2. Ac.0.40 decimals of land from Plot No. 717 under Khata No. 306 of village Brahman Khanda under Salipur Police Station was acquired for extension of minor irrigation canal up to village Sukpaika. The land was acquired on 23.4.1968 and possession was taken on 7.1.1969. Respondent No. 10 assessed the compensation and passed the award treating the category of the land to be "Patita". In that award u/s 11 of the Act, Respondent No. 10 assessed the value of the land at Rs. 200/- (rupees two hundred), value of the trees at Rs. 30/- (rupees thirty) and additional compensation at Rs. 34.50/- (rupees thirty four and paise fifty). Accordingly he granted a total compensation of Rs. 264.50/- (rupees two hundred sixty four and paise fifty). Respondent No. 10 awarded that

compensation in favour of Opp. Party Nos. 1 to 6 (who, along with the L.Rs. of some of the deceased opp. parties, are now Respondent Nos. 1 to 9). The claimant filed a protest petition and raised its objection to the determination of the compensation in favour of the said opp. party members and also on the amount at which the value was assessed. She claimed that she had purchased Ac.0.33 decimals of land from the original owner as back as in the year 1944 and Ac.0.27 decimals out of the acquired Ac.0.40 decimals are part of that purchased land. Accordingly she claimed for compensation over that Ac.0.27 decimals of acquired land. She did not claim the compensation for the remaining Ac.0.13 decimals out of Ac.0.40 decimals of acquired land. Her further claim is that the acquired land was "Amba Bagayat", i.e., mango tope and because of the aforesaid acquisition and digging of canal, she has sustained loss of 30 mango trees. She claimed compensation @ Rs. 20,000/- (rupees twenty thousand) per acre for the land which she lost by virtue of that acquisition and @ Rs. 500/- (rupees five hundred) for each of the trees which she lost because of the acquisition. The above noted opposite party members in spite of notice did not contest to her claim. Be that as it may, Respondent No. 10 made a reference u/s 18 of the Act for determination of the claim of the petitioner and apportionment of compensation.

3. In the Court of the Sub-ordinate Judge, Cuttack also only Respondent No. 10 contested to the claim.

4. After undertaking an enquiry on 12.4.1990 Learned Sub-ordinate Judge passed the award determining the market price of the acquired land @ Rs. 20,000/- {rupees twenty thousand) per acre and the value of each mango tree at Rs. 400/- (rupees four hundred). He granted the solatium @ 30% and accordingly passed the impugned award. Respondent No. 10 challenged that award in First Appeal No. 316 of 1990. On 21.4.1992 this Court disposed of that appeal by setting aside the impugned award and remanding the case for fresh disposal after providing opportunity of adducing evidence to each of the parties for determination of the actual value and the quantum of compensation on the basis of the market price. After receipt of the case on remand, learned Sub-ordinate Judge again provided opportunity of hearing to the parties. In that process P.W. No. 1 who had been examined previously, was further examined and Ext. 4 and sale deeds marked Ext. Y/1 for identification were accepted on record. Respondent No. 10 at that stage, did not adduce any further evidence.

5. Learned Sub-ordinate Judge on 29.9.1992 passed the impugned award. It reveals from the said award that, so far as the apportionment of compensation is concerned, he decided it in the same manner as was done in the previous award of the year 1990. Accordingly he allowed the claim of the appellant for compensation to the extent of Ac. 0.27 decimals of land. For the remaining Ac.0.13 decimals the Opp. Parties No. 1 to 6 (Respondent Nos. 1 to 9) were declared to be entitled to the compensation. On assessment of the evidence on record, he found that the rate at which compensation has been claimed by the

appellant is based on no evidence in as much as the sale deeds and documents filed relating to sale transactions are not of similar category and also otherwise not relevant to determine the market price of the acquired land by the date of acquisition. He also recorded the finding that the mango trees claimed to have been standing on the acquired land were old enough to give useful production and apart from that the appellant failed to prove what was the yield of fruits from the mango tope so far as to determine the valuation. Under such circumstance he found that the appellant failed to prove the claim of higher compensation. As regards the compensation for 30 mango trees, Learned Sub-ordinate Judge found that there was no evidence on record to show or suggest that by the date of acquisition in the year 1968 the mango trees, as recorded in the revenue papers of the year 1930 were still existing and therefore the appellant is not entitled to compensation for 30 mango trees. He also recorded the finding that the 30 mango trees were not proved to be standing on the Ac.0.27 decimals of land belonging to the share of the claimant. Accordingly he also recorded the aforesaid finding. After recording such findings Learned Sub-ordinate Judge found it proper to discharge the reference by confirming the award u/s 11 of the Act.

6. During pendency of the First Appeal, Respondent No. 9 (Opp. Party No. 6 in the Court below) died and because of no substitution, the appeal abated against the said opp. party. Respondent No. 10 thus argued to abate the appeal as a whole. This Court finds no merit in that contention of the Respondent No. 10 because the deceased respondent has never contested or controverted to the right and interest of the appellant over 27 decimals of land or claim of higher compensation. Thus, this Court finds that abatement of the appeal against the Respondent No. 9 does not stand on the way to decide the appeal.

7. In course of hearing of the appeal, Respondent No. 10 filed an application under Order 41, Rule 27, CPC to adduce additional evidence relating to the particulars of the mango trees standing on the acquired area. Appellant opposed to that prayer. Since the respondent declined to adduce evidence after remand and no justifiable reason has been by it for not tendering that evidence at the relevant time, therefore, this Court rejected that application under Order 41, Rule 27, CPC as per the order passed on 13.9.2000.

8. So far as the present appeal is concerned, the solitary point falls for determination is, as to whether the claim of higher compensation by the appellant is entertainable. In other words, whether the appellant has been able to prove a case of existence of higher rate to claim and get higher compensation both for the land and the trees. Learned Counsel for the appellant in that context referring to the settlement record of the year 1930 (Ext. 3) states that the entry in the "Khatian" indicates that as against Plot No. 717 described as mango tope there was a note of 45 mango trees, 12 date-palm trees, 9 jackfruit trees, 2 "Karanja" trees and 6 "Kuruma" trees and therefore that evidence is sufficient enough to sustain the claim of the appellant that 30 mango trees and 2

"Karanja" trees were on the Ac.0.27 decimals of acquired land of the appellant. The aforesaid evidence is not sufficient to draw such a presumption. But, it appears from the evidence of P.W. Nos. 1 and 2 that each of them have stated about existence of 30 mango trees and 2 "Karanja" trees on Ac.0.27 decimals of land belonging to the appellant. Surprisingly enough, Respondent No. 10 has not produced any record before the Court below to falsify the claim of the appellant. Even no cross-examination was made on that score to both the witnesses except a bald suggestion given to P.W. No. 1 that such mango trees were not on the acquired land by the date of acquisition. Thus, this Court finds that the evidence of P.W. Nos. 1 and 2 read with Ext. 3 favours the claim of the appellant. This Court is not inclined to consider the claim of compensation for 2 "Karanja" trees, because in her claim petition she did not pray for compensation due to loss of "Karanja" trees. On the other hand this Court considers the claim of loss of 30 mango trees, because that has been claimed specifically in the claim petition of the appellant.

9. It appears that, Learned Sub-ordinate Judge did not visualize the evidence in the aforesaid manner so as to record appropriate finding. When negative evidence is not available on record, it is the duty of the Court to reach to a finding on the basis of positive evidence, which is on record. Thus, it is held that appellant has proved loss of thirty mango trees to advance claim of compensation for the same.

10. After reaching to the aforesaid finding on the existence of thirty mango trees over Ac.0.27 decimals of land, this Court has to visualize that those mango trees were already there by the year 1930 when Ext. 3 was prepared. So, thirty fully grown and matured mango trees are sufficient enough to cover the entire Ac.0.27 decimals of land. This Court has to take that view, because there is no specific evidence available from the side of the claimant that all the 30 mango trees were on a part out of Ac.0.27 decimals of land.

11. The evidence on record, as indicated by Learned Sub-ordinate Judge, is to the fact that P.W. No. 1 in his cross-examination has stated that the value of a "Bagayat" land was @ Rs. 22,000/- per acre by the year of acquisition. In that context the evidence of P.W. No. 2 is that such value was within 15 to 16 thousand rupees. Because of the wide gap between the prices so quoted, Learned Sub-ordinate Judge has rejected such opinion evidence of P.Ws. 1 and 2. In that context Learned Sub-ordinate Judge failed to take into account the fact situation that even a suggestion was not given denying to existence of such valuation of a mango tope by the date of acquisition. In other words, even if the opinion evidence of P.Ws. 1 and 2 are not sufficient to conclusively prove such a higher valuation for the acquired land, but such evidence of P.Ws. 1 and 2 was not challenged by Respondent No. 10. Therefore, in the absence of any specific evidence on record to determine the valuation, that opinion evidence should have been considered as relevant evidence to determine the fact in issue. Learned Sub-ordinate Judge has failed to visualize the circumstance in the above-

indicated manner for a just decision in the case.

12. In the award u/s 11 of the Act, Respondent No. 10 has indicated that thirty rupees were granted towards compensation for the loss of each tree. It is not indicated therein as to how he determined the valuation and for what number of trees. Even at the stage of enquiry no specific evidence was adduced on behalf of the Respondent No. 10 to indicate the mode of assessment for the award u/s 11 at least with respect to the trees. The value of the land was determined by treating its category as "Patita". It was never considered as "Bagayat" and the sales statistics of "Bagayat" land was not considered to determine compensation and pass the award u/s 11 of the Act. Therefore, all such facts are sufficient to not to accept the award u/s 11. That aspect was also not properly considered by Learned Sub-ordinate Judge.

13. Under the given facts and circumstances and the findings recorded above, this Court is to assess the compensation by determining the market price, because a further remand for that purpose will be an injustice to the parties and abuse of the process of law. Thus, this Court takes of that issue. Section 23 of the Act provides the guidelines, i.e., matters to be considered in determining the compensation and the first requirement is the market value of the land on the date of publication of the Notification u/s 4 of the Act. The acquired portion being admittedly a "Bagayat" if that would have been transacted for sale with an individual, then it would not have been sold as a piece of land but as a "Bagayat", i.e., a tope. When a tope is sold, both the land and the trees are valued together and the price is determined. In such a case the land and the trees are not separately or differently determined and fixed. Therefore, in this case, this Court finds that this is the method which is to be adopted to determine the compensation for the loss of the land and the trees so far as Ac.0.27 decimals of land is concerned. According to P.W. No. 1 (in the cross-examination) the value of the mango tope by the year 196.8 would have been about Rs. 22,000/- (rupees twenty two thousand) per acre. According to P.W. No. 2 (in the cross-examination) the value of such a tope would have been about 15 to 16 thousand rupees by the year of acquisition. The claimant is bound by the evidence adduced by her witnesses. Therefore, the lower valuation quoted by P.W. 2 if accepted, then the value of a tope could have been @ Rs. 15,000/ (rupees fifteen thousand) per acre, if that valuation is adopted, then no wrong is done to either of the parties. Therefore, this Court accepts that valuation and directs for determination of compensation to the appellant accordingly and proportionately for the Ac.0.27 decimals of land acquired from her for the purpose of extension of minor irrigation canal, and in view of that she is not entitled for separate compensation for the trees. Other entitlements as per the law be provided to her. The impugned award is accordingly set aside and the appeal is accordingly allowed with cost. Hearing fee is assessed at contested scale. If the compensation amount is not paid within a period of three months, then petitioner is entitled to realize the same through Court and in that event Respondent No. 10 shall be liable to pay simple interest at the rate of six percent

on the awarded amount till the date of realization.