
(1971) 07 OHC CK 0019
In the Orissa High Court
Case No : First Appeal No. 77 of 1967

Collector, Cuttack

APPELLANT

Vs

Padma Charan Pani and Others

RESPONDENT

Date of Decision : 12-07-1971

Acts Referred:

Evidence Act, 1872 — Section 65
Land Acquisition Act, 1894 — Section 23

Citation : AIR 1972 Ori 203

Hon'ble Judges : A. Misra, J

Bench : Single Bench

Advocate : Standing Counsel Transport, for the Appellant; G.N. Sengupta, for the Respondent

Final Decision : Allowed

Judgement

A. Misra, J.—The State is the appellant against an award dated 8-12-1966 passed by the Special Officer at Cuttack performing the functions of a court on a reference u/s 18 of the Land Acquisition Act 1 of 1894 (hereinafter to be referred to as the Act).

2. A 3.96-6 1/4 kadis of land was acquired in village Bhitargarh. The Land Acquisition Officer awarded a total compensation of Rs. 1,452.39. though respondents claimed compensation at the rate of Rs. 5,000/- per acre towards the value of the acquired land, besides Rs. 15,000/-towards the loss of income from fishing and compensation for the house alleged to have existed on the acquired land. As the respondents raised objection to the adequacy of compensation fixed by the Land Acquisition Officer, a reference u/s 18 of the Act was made.

3. The court below enhanced the amount of compensation to Rs. 5,933.42 fixing the market value of the acquired land at Rs. 1.200/- per acre, the value of the house at Rs. 400/- and additional compensation by way of solatium at Rupees 773.92. It disallowed the claim of the respondents for compensation regarding

tank and embankment as well as income from alleged fishing as the first two items were not specifically claimed in the objection petition and the last item was not accepted. There being no cross-appeal or cross-objection, so far as these three items are concerned, the order has become conclusive and consideration in the present appeal is confined only to the value of the land and the house. Deducting the amount already received by the respondents, the court below held that they are entitled to the balance compensation of Rs. 4,481.03.

4. The appellant challenges the correctness of the impugned order on the following grounds: (1) The Court below has committed an initial error in assuming the acquisition to be on 5-9-1963, though the notification under Section 4(1) of the Act was published on 31-10-1961: (2) the court below has committed an error in excluding from consideration the three sale deeds marked Exs. E, E/1 and E/2 filed by the State as evidencing contemporaneous transactions and (3) the court below has arbitrarily proceeded to fix the value of the land at Rs. 1,200/-per acre.

5. It is a settled position of law that in a reference u/s 18 of the Act, an objector occupies the role of a plaintiff in a regular civil suit and necessarily the onus rests on him to establish that the amount awarded by the Land Acquisition Officer was incorrect or grossly inadequate. u/s 23(1) of the Act, in determining the quantum of compensation, the court has to take into consideration the prevailing market value of the land at the date of notification, u/s 4(1). Judicial pronouncements have laid down that such market value is to be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser.

6. The first ground of attack is that the court below has committed an initial error in assuming that the acquisition was on 5-9-1963, and therefore, has been influenced in fixing the market value of the acquired land on the basis of prevailing rates on that date. It is not disputed that the notification u/s 4(1) of the Act was published on 31-10-1961 and the market rate prevailing on that date would be relevant for the purpose of determining the value of the acquired land. This contention, however, does not appeal to me as neither in the court below nor in the memo of appeal any emphasis was laid on this aspect. Further, there is no evidence nor is there even a suggestion that in between October, 1961 and September, 1963, any appreciable increase in the price of lands in the locality had taken place. Therefore, I do not consider that this ground of attack is sufficient to interfere with the order of the court below.

7. The other points urged, however, seem to be substantial. Respondents examined 2 witnesses and relied upon Exs. 1 and 2, awards in two other land acquisition cases appertain to the same village in support of their claim of higher compensation. The State examined 3 witnesses and filed certified copies of three sale deeds marked Exs. E, E/1 and E/2 to prove the adequacy of compensation fixed by the Land Acquisition Officer. Further, Ex. A, entry in the field enquiry report and Ex. B, sales statistics on the basis of information obtained from the

Sub-Registrar's office were also produced by the State. P. W. 1 deposed that the acquired land used to yield 5 bharans of paddy per acre Per year and there was a thatched house containing two rooms on a portion of the said land, besides a tank valued at Rs. 500/- which used to yield fish worth. Rs. 500/- per year. He also stated that there was an embankment worth Rs. 1,000/- and the value of the acquired land would be Rs. 5,000/-per acre. P. W. 2 substantially supported the statements of P. W. 1. The court below has expressed no opinion about the value of this oral evidence and to what extent it is acceptable. This evidence is totally unacceptable as the statements are highly exaggerated. If the acquired land was yielding 5 bharans of paddy per acre per year, the total yield from the acquired land would not have been less than 15 bharanas. In addition, they have stated that the tank used to yield an income of Rs. 500/- per year. If the acquired land was yielding such a huge income, the price per acre claimed at Rs. 5,000/-would be undoubtedly grossly inadequate. This itself shows the falsity of the evidence or at least that the statements of the P. Ws. are highly exaggerated. Obviously, for this reason, the court below does not purport to rely on their evidence in coming to its finding. Exs. 1 and 2 have not been accepted by the court below as affording a guide for determining the value of the acquired land. It has ob-served:--

"Accordingly, I am of the opinion that the value under Exts. 1 and 2 cannot be a basis for determining the value of the acquired land in the present case".

The result is that the court below has not accepted the documents or the oral evidence adduced by the respondent for determining the value of the acquired land. It is true that Exs. A and B are not admissible in the absence of examination of authors of those documents and the oral evidence of the O. P. Ws. also does not provide any assistance in determining the market value of the land in question. On the other hand, on behalf of the State. Exs. E, E/1 and E/2, certified copies of three sale deeds were filed showing certain sale transactions in that locality during the months of June and July, 1962. Summonses were issued to the vendors under those documents, but in two cases, they were not served and in one case, there was service. The court below has excluded these documents from consideration on the ground that they are inadmissible u/s 66 of the Evidence Act.

8. Learned Standing Counsel for appellant has urged that though they are in the nature of secondary evidence the documents having been admitted in evidence and marked as exhibits without objection. It was not open to the court below to exclude them from consideration. This aspect has not been discussed by the court below. In a decision of the Andhra Pradesh High Court reported in Ajjarapu Subbarao Vs. Pulla Venkata Rama Rao and Others, . a similar question arose for consideration and it was observed as follows:

"The learned single Judge has, in respect of the majority of the documents mentioned above, stated that they are inadmissible on account of the provisions of Section 65 of the Evidence Act This view does not appear to us to be tenable.

The rule in Section 65 excluding secondary evidence is not so rigid as to be enforced even if no objection was taken at the trial by the party against whom the secondary evidence was offered. When a party has waived proof of circumstances justifying the giving of secondary evidence he cannot raise an objection in appeal, vide *Bacharbhai Narabhai Vs. Mohanlal Ranchhoddas*, . A document can be treated as duly admitted where its admission without being proved is not objected to by the party affected, vide *Latchayya Subudhi v. Seetaramayya*. AIR 1925 Mad 237. Where the objection to be taken is not that the document is in itself inadmissible, but that the mode of proof put forward is irregular or insufficient, it is essential that the objections should be taken at the trial before it is marked as exhibit and admitted".

In the present case, these documents have been admitted in evidence and marked as exhibits without objection. Having admitted them in evidence without objection, the court below has not given any other ground for excluding them from consideration. If these documents are treated as part of the evidence, another pertinent question may arise as to whether they afford any evidence about the market value of the land on or about the date of its acquisition. This will again be dependent on the nature of the lands covered by these sale deeds, their situation and their possessing equal advantages or being subject to similar disadvantages as the acquired land. Instead of considering all these aspects, the court below has observed:

"Considering the entire evidence on record, the nature, situation, extent, income and potential value of the acquired land, I am inclined to be of the opinion that the value of the acquired land was Rs. 1,200/- per acre at the time of acquisition and the value of the house on the acquired land was Rs. 400/- only at the time of acquisition."

The above observation is not based on any evidence nor does the order of the court below show in what manner it has considered the nature, situation, extent, income or potential value which purport to have influenced it in arriving at the above findings. In short, the judgment of the court below is not a reasoned one based on evidence adduced in the case. More or less it has proceeded to arbitrarily fix the value of the acquired land and on that basis awarded compensation. Such a judgment not being in accordance with law cannot be maintained.

9. In the result, the appeal is allowed, the judgment and decree of the court below are set aside and it is remanded for fresh disposal according to law. Both parties will have the option to adduce further evidence, if they so choose, regarding the value of the acquired land and house at or about the date of notification u/s 4(1) of the Act. Costs of the appeal will abide the final result.