
(1960) 07 OHC CK 0012
In the Orissa High Court
Case No : First Appeal No. 3 of 1955

Collector of Puri	Vs	APPELLANT
Hrushikesh Mitra and Others		RESPONDENT

Date of Decision : 27-07-1960

Acts Referred:

Land Acquisition Act, 1894 — Section 25, 31, 34, 4(1)

Citation : AIR 1961 Ori 135 : (1960) 26 CLT 529

Hon'ble Judges : R.L. Narasimham, C.J;G.C. Das, J

Bench : Division Bench

Advocate : Advocate General, for the Appellant; L.K. Dasgupta and R.C. Patnaik, for the Respondent

Final Decision : Partly Allowed

Judgement

Narasimham, C.J.—This is an appeal by the Collector of Puri against the judgment of the District Judge, Ganjam-Nayagarh, directing payment of compensation to the respondent at a certain rate, in respect of 1.44 acres of land in Puri town which was acquired by the Collector for the construction of the Fire Station at Puri.

2. The said piece of land was originally requisitioned under Rule 75-A of the Defence of India Rules and possession was actually taken on the 6th January 1945. Section 19 of the Defence of India Act contains detailed provisions for payment of compensation when property is requisitioned under the Defence of India Rules. But for some reason or other (which is not clear from, the record), neither the Collector nor the previous owners (respondents) cared to get the compensation fixed for the requisitioned property, under the aforesaid Section of the Defence of India Act.

But the property admittedly remained in the possession of the Collector of Puri and it was eventually decided to acquire the same under the provisions of the Land Acquisition Act. Accordingly, the notification u/s 4(1) of the Land Acquisition

Act was published in the Gazette on 21st; February, 1947 and the Land Acquisition Officer, after giving the usual notice, fixed the compensation payable for the plot, at Rs. 6500/- per year.

He added Rs. 100/- for the tank that was there and after fixing additional compensation at 15 per cent for compulsory acquisition, he further directed that interest should be paid at 6 per cent per annum from the date on which possession was taken under the Rule 75-A of the Defence of India Rules, namely the 6th January 1945. The total amount awarded by him, in accordance with the aforesaid calculation was Rs. 19,360/-. The respondents, however, claimed compensation at Rs. 20,000/- per acre and as directed by him a reference was made to the District Judge u/s 18(1) of the Land Acquisition Act.

3. The learned District Judge thought that the rate per acre fixed by the Land Acquisition Officer was too low and that he failed to give due weight to a sale deed, Ext. 3 dated 15th January, 1946 in respect of an adjacent plot of land, which had been sold at Rs. 18,000/- per acre. The land covered by Ext. 3 though adjacent to the disputed plot, was of a very small extent, and was sold to private party who might have been willing to pay a high price.

The learned District Judge, therefore, thought that a fair estimate of the exact value of the disputed land should be arrived at by striking an average between the price as shown in Ext. 3 and the price as worked out by the Land Acquisition Officer on the basis of the previous sales of the plot in the locality. He then estimated this average to be Rs. 13,000/- per acre. In my opinion, this estimate of the learned District Judge is unassailable.

Due weight ought to be given to the sale price given in Ext. 3 which was of the year 1946, i.e. just a year before the date of issue of the notification u/s 4(1) of the Land Acquisition Act though some deduction may be made out of that amount on account of the fact that the area covered by Ext. 3 was rather small. But the sale deeds on which the Land Acquisition Officer relied related to lands which were at some distance from the disputed land though in the same locality.

But in a town like Puri the value of house sites may vary even though the plots are not far from one another. In view of the paucity of evidence I think the lower Court rightly took the average of the various sale prices in the locality in fixing the rate of compensation payable. I do not therefore see any reason to disturb the finding of the learned District Judge that the compensation in respect of the disputed piece of land would be fixed at Rs. 13,000/- per acre.

4. But the District Judge committed a mistake in directing payment of interest from the date of requisition under the Defence of India Rules instead of from the date of taking over possession under the Land Acquisition Act. I have already shown that for requisitioning property under the Defence of India Rules compensation should have been claimed u/s 19 of the Defence of India Act. The Land Acquisition Act provides for payment of compensation only for property acquired under the provisions of that Act, i. e. from the date on which possession

is taken under that Act.

Here however the property had already been taken possession of on 9th January 1945 under the Defence of India Rules and the decision to acquire it under the Land Acquisition Act was intimated to the party on 21st February, 1947, when the notice u/s 4(1) was published and therefore the latter date should be taken as the date of taking possession under the Land Acquisition Act and the respondents can claim compensation only from that date.

Again the learned District Judge has awarded Rs. 5,000/- as compensation for the trees that were said to have been cut by the Collector while the plot was under requisition. This sum also should have been claimed from the Collector under the provisions of the Defence of India Act and cannot be claimed in the proceeding under the Land Acquisition Act.

5. Thus, legally the respondents can claim compensation only from the date on which the proceedings under the Land Acquisition Act commenced, that is from the 21st February 1947. Possession of the property under that Act must also be deemed to have been taken only from that date, and hence the respondents can claim interest only from that date, by virtue of Section 34 of the Land Acquisition Act.

But the award of the Land Acquisition Deputy Collector allowed interest from the date of requisition under the Defence of India Rules, namely the 6th January, 1945. This portion of the award was not challenged by the Collector before the learned District Judge and he could not possibly challenge the same in view of the principle underlying Section 25 of the Land Acquisition Act.

Hence I do not think it will be proper for this Court to disallow the interest granted in the award From the 6th January, 1945 to the 21st February, 1947. I may cite in this connection AIR 1929 163 (Privy Council) where the Privy Council directed payment of interest from the date of taking over possession which was anterior to the date of commencement of the proceeding under the Land Acquisition Act.

6. The order of the District Judge is therefore modified as follows :

"The respondents will get interest at 6 per cent per annum on the total compensation estimated at Rs. 6500/- per acre, for the total area of 1.44 acres plus 15 per cent as statutory compensation, plus Rs. 100/- for the tank, from the 6th January, 1945 till the 21st February 1947. From the 21st February 1947 till the actual payment of the compensation the respondent shall be entitled to compensation at the rate of Rs. 13,000/- per acre on the total area of 1.44 acres, plus 15 per cent as statutory compensation, plus Rs. 100/- for the tank, and interest at 6 per cent per annum on the total sum so estimated. The sum of Rs. 500/- awarded by the District Judge as compensation for the trees is set aside.

7. The appeal is thus partially allowed. Both parties will bear their own costs.

Das, J.

8. I agree.