

(1979) 05 OHC CK 0011
In the Orissa High Court
Case No : First Appeal No. 47 of 1970

Collector of Puri

APPELLANT

Vs

Kamala Kanta Das

RESPONDENT

Date of Decision : 01-05-1979

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 23(2)

Citation : AIR 1979 Ori 147 : (1979) 47 CLT 613

Hon'ble Judges : R.N. Misra, J; P.K. Mohanti, J

Bench : Division Bench

Advocate : G.B. Patnaik, for the Appellant; R.C. Patnaik and P.K. Misra, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—The Collector of Puri has carried this appeal against the award of the learned District Judge of Puri passed under Orissa Act 18 of 1948.

2. Under three separate notifications issued under Orissa Act 18 of 1948 in the manner indicated below, 50 acres of lands of the respondent were acquired for the purposes of Capital construction at Bhubaneswar:--

(i) 8-8-1950 -- 13.752 acres. (ii) 15-11-1952 -- 20.200 acres. (iii) 31-3-1953 -- 16.048 acres.

The claimant asked for a total compensation of Rs. 4,69,900 in the following way:--

(i) Market value of 50 acres of lands at Rs. 7,000/- per acre. Rs. 3,50,000/-

(ii) Solatium at 15% of the market value. Rs. 52,500/-

(iii) Damage on account of loss of trees. Rs. 2,000/-

(iv) Damage to other property on account of acquisition. Rs. 55,400/-

(v) Damage for change of business. Rs. 10,000/-

The competent authority offered compensation at the rate of Rs. 75 per acre and the Arbitrator by his award dated 30th of June, 1962, determined the market value at Rs. 400 per acre and awarded a total compensation of Rs. 28,750. The award was assailed before this Court in M. A. No. 95 of 1962 and by judgment dated 16th of December, 1963, a Bench of this Court allowed the appeal, set aside the award and remitted the matter to the Arbitrator for further hearing and a fresh disposal in accordance with law. After remand, the Arbitrator has awarded Rs. 2,32,138 towards the value of the lands and Rs. 34,820.70 paise as solatium. According to the Arbitrator, the market value per acre of land in respect of the acquisition made in 1950 is Rs. 1,000; for the land acquired in 1952 the market value is Rs. 5,250 : and for the land acquired in 1953 the market value is Rs. 7,000 per acre. This award is assailed in appeal.

3. At the hearing Mr. G. B. Patnaik, learned Additional Government Advocate, raises three contentions:--

(i) The determination of market value per acre of land at Rs. 7,000 is based on no evidence and thus is liable to be vacated.

(ii) The acquired property being leasehold interest under Khurda Khasmahal, the State Government as owner of the land had also an interest in the property and thus the entire compensation could not have been given to the claimant as a lessee.

(iii) Under the provisions of Orissa Act 18 of 1948, solatium is not payable.

4. For the purpose of determining the market value of the lands, the Arbitrator had mainly relied upon the premium charged by the State Government in leasing out its lands to people in the neighbourhood. It may not be out of place to mention that the Government Assessor who happened to be an Executive Engineer gave the opinion that market value per acre of land would be Rs. 7,000. Instead of relying upon the Assessor's opinion, the Arbitrator relied upon certain lease deeds executed by the State. Ext. 8 is a lease of July, 1953, which is almost contemporaneous to the last item of acquisition. There the value per acre of land worked out at Rs. 10,800. Ext. 6 is a lease of the year 1956 where the same rate was adopted. The Arbitrator found that the foundation stone for the location of the Capital was laid in 1948 by the then Prime Minister of India and by 1953-54 lands belonging to the State Government were being leased out for residential purposes at Rs. 10,000 per acre. In that view of the matter, the Arbitrator determined the market value of the land at Rs. 10,000 for the acquisition of the year 1953, but since the claimant asked for Rs. 7,000 per acre, he accepted the same as reasonable. In regard to the acquisitions of 1950 and 1952, keeping the market value of 1953 in view, the Arbitrator reduced the same by adopting Rs. 5,250 per acre in 1952 and Rs. 1,000 per acre in 1950.

There is no justification for the argument of learned Additional Government

Advocate that the leases granted by the Government in 1953-54 are not available to be accepted as guideline. The claimant's interest in the property was leasehold under the State Government. The leases relied upon are also leases granted by the State Government for the same purpose. We are, therefore, of the view that the leases granted by the State Government contemporaneously can be utilised as good guidance for determining the market value. The deductions made from the market value of 1953 for the earlier acquisitions also seem to be reasonable. The first contention of learned Additional Government Advocate in the premises must be rejected.

5. Undoubtedly, the lands acquired were leasehold interest. A learned single Judge of this Court in the case of Republic of India v. Prafulla Kumar Samal, ILR (1976) kar 1392, examining the status of a Khasmahal lessee held-

".....Rights of a lessee in Khasmahal lands are in no way different from those which one has in his own private land. Clause (15) of the lease deed confers a right of renewal on the lessee, and as has been pointed out earlier, the said right cannot be denied by the lessor. Besides the lessee's right in the Khasmahal land being heritable and transferable the lessee can create a permanent right of tenancy in his holding. Thus, in all respects the rights of a lessee are just similar to those of an owner of a private land (see 1935 CLT 34, Munshi Abdul Kadir Khan v. Munshi Abdul Latif Khan and 1937 C LT 67, Madhushudan Swain v. Durga Pd. Bhagat). Their Lordships of the Supreme Court in the decisions reported in AIR 1965 SC 1923 (Mohammad Amir v. Municipal Board, Sitapur) and Special Land Acquisition and Rehabilitation Officer, Sagar Vs. M.S. Seshagiri Rao and Another, have held that a lessee in respect of Khasmahal land is the owner of the same. The same view has also been expressed in a decision reported in AIR 1060 P&H 31 7(FB)....."

The decision has been affirmed by the Supreme Court in the case of Union of India (UOI) Vs. Prafulla Kumar Samal and Another, . It is true that the decision was rendered in a criminal case as pointed out by learned Additional Government Advocate. But for the principle which is relevant no distinction lies between a criminal case and a civil case. Since what was acquired was lessee's interest, the Arbitrator was not called upon to determine the market value of the entire land. In fact, the foundation for fixing the market value was Government leases and, therefore, it would be reasonable to accept the stand taken by the claimant's counsel that the valuation adopted in respect of the three acquisitions was representing the leasehold interest and not the entire rights over the lands. In the premises, the compensation determined by the Arbitrator was not liable to be apportioned between the owner of the property and the lessee. The second contention of learned Additional Government Advocate has also to be rejected.

6. The last contention is that solatium is not payable under Orissa Act 18 of 1948. Section 23(1) of the Land Acquisition Act of 1894 has been specifically applied. It is true that the concept of solatium is in Section 23(2) of the Land Acquisition Act and that provision has not been extended to Orissa Act 18 of

1948. According to learned Additional Government Advocate, solatium was not payable and the Arbitrator went wrong in awarding solatium. Reliance is placed on some observations of a Bench decision of this Court in the case of The State of Orissa Vs. Baishnab Sahu and Others, . On the other hand, the claimant's counsel relies upon the decision of the Supreme Court rendered in appeal from The State of Orissa Vs. Baishnab Sahu and Others, reported in 35 (1969) C LT 535 (State of Orissa v. Baishnab Sahu). The Supreme Court stated:--

".....As the arbitrator had to take into account the principles of the Land Acquisition Act, we think the above figure should be augmented by 15% by way of solatium in view of the compulsory nature of the acquisition.....,"

What was taken into account for awarding solatium was the nature of the acquisition and not the concession of the State Government as referred to by Chief Justice Narasimham in The State of Orissa Vs. Baishnab Sahu and Others, that in regard to acquisition of lands for the Hirakud Dam Project Government were agreeable to pay solatium.

Reliance has also been placed on the claimant's side on two decisions of the Supreme Court. In the case of Balammal and Others Vs. State of Madras and Others, , the Court took the view that if the land was available to be acquired under two Acts and one provided better compensation than the other, a situation giving rise to the application of Article 14 of the Constitution would arise. That view was accepted by a seven-Judge Bench of the Supreme Court in the case of Nagpur Improvement Trust v. Vithal Rao AIR 1973 SC 639. It is unnecessary to examine the matter from the point arising in the latter two decisions of the Supreme Court referred to above. It is appropriate, in our view, to follow the guideline indicated by the Supreme Court in the Orissa decision (35 1969 C LT 535) where in respect of an acquisition under the Act solatium had been awarded. Therefore for the acquisitions under Act. 18 of 1948, the claimant is entitled to fair market value and fair market value would be the market price and solatium keeping in view the compulsory nature of acquisition. The third contention of learned Additional Government Advocate must, therefore, also be rejected.

7. All the contentions advanced in support of the appeal having been rejected, the appeal must be dismissed as without merit. Respondent shall be entitled to his costs in this Court.

P.K. Mohanti, J.

8. I agree.