

(1998) 09 PAT CK 0069
In the Patna High Court
Case No : A.F.O.D. No. 12 of 1989 (R)

Dineshwar Prasad

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 24-09-1998

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 14, 4, 9

Citation : (1999) 3 BLJR 1760 : (1999) 1 RCR(Rent) 121

Hon'ble Judges : Prasun Kumar Deb, J

Bench : Single Bench

Judgement

Prasun Kumar Deb, J.—This appeal has been preferred against the judgment and award dated 6-8-1988 passed by Shri Bishwanath Prasad, Tribunal constituted u/s 14(2) of the Coal Bearing Areas (Acquisition & Development) Act, 1957, in Reference Case No, 1 of 1987.

2. An area of 7.61 acres of land appertaining to Khata Nos. 1, 3 and 4 together with four Sakhua trees belonging to the original claimant Jitan Lal S/o Ganpat Lal of Village Dania, Police Station Gomia in the district of Giridih were acquired by the Central Government and after acquisition determined the valuation of the different kinds of lands on the following rates:

Tand I & Paddy I: At the rate of Rs. 12,700/- per acre.

Paddy II : At the rate of Rs. 7.940/- per acre

Paddy III : At the rate of Rs. 6.350/- per acre

Tanr II : At the rate of Rs. 3,175/- per acre

Tanr III : At the rate of Rs. 1.588/- per acre.

Parti Kadim : At the rate of Rs. 1.059/- per acre.

3. Besides the above valuation, the Central Government has also fixed Rs. 20/- as a valuation of one Sakhua tree and offered the valuation of different kinds of

lands and the above said four Sakhua trees to Jitan Lal who received compensation as assessed on protest and filed a petition for referring the compensation matter to the tribunal. In the meantime, Jitan Lal died and in his place, the appellant i.e. his widow Smt. Malti Devi alias Shakuntala Devi and son Dineshwar Prasad have been substituted. According to the claimants, 7.61 acres of land appertaining to Plot Nos. 510, 52.1, 523, 524 and 527 under Khata No. 1 and Plot No. 543 in Khata No. 2 and plot Nos. 414, 415, 454 and 455 of Khata No. 4 have been acquired by the Central Government as per the provisions of the Coal Bearing Areas (Acquisition & Development) Act, 1957 (the Act) but the classification of the lands have not been correctly done and such classification had been based upon the entries made in the survey record of rights published long back in the year 1908 without any spot verification at the time of acquisition whether the classification remained so. According to the claimants, Plot No. 510 having an area of 2.56 acres of Khata No. 1 is a Don Class I land but it was shown as Class III Tanr land in the assessment of compensation. Similarly Plot Nos. 523 and 524 of the said Khata are Don Class I paddy land but the same had been shown as Class III Tanr land, "Dhankhet". Regarding other plots also, some objections have been made to the effect that the whole of the lands were either paddy land or tanr land as the claimants since their predecessors after hard labour had changed the nature of the land originally registered in the survey record of rights in the year 1908. The land is situated in the Industrial area being surrounded by different collieries and washeries. It was further alleged that a subsequent report from Shri U.P. Sinha, Revenue Officer and Sita Ram Singh and Nilpat Singh Munda, Revenue Inspectors, Charhi was called for as per the direction of the then Project Officer, Basantpur Washery. The lands acquired were found to be paddy growing tanr lands and that the claimants were having the income of Rs. 10,000/- per year being the price of the paddy produce in the don lands and Rs. 5,000/- per year being the price of paddy produced in the tanr lands but because of acquisition, the claimants had been deprived of their said income and as such they are entitled to get damage on account of loss of income. The claimants had prayed that the marked value of the lands in question should not be fixed less than Rs. 80,000/- per acre. The claimants had also claimed solatium and interest as permissible under the law. The Central Government as referencer had also filed rejoinder and alleged that the rates of different classes of lands had been fixed at by comparing sale figure of the different deeds of the vicinity for the year 1980 as required under the said Act and compensation had also been paid as per determination being made under the Land Acquisition Act for similar land in the vicinity. They have denied that the classification has not been done as per the survey record of rights in 1908 rather the entries made in the authentication report prepared at the spot by the Circle Officer, Gomia, who is the custodian of the revenue records and as such the classification cannot be challenged.

4. On the basis of the pleadings of the parties, the learned Tribunal has framed the following points for determination in the reference case:

(1) Whether the classification made by the Central Government for determining the compensation of the lands is correct ?, If not, what should be the classification of the lands acquired ?

(2) What should be market value of the lands on the date of notification u/s 4(1) of the Act ?

(3) What should be the market value of the above said four Sakhua trees ?

5. For and on behalf of the claimants, as many as 10 witnesses have been examined including the claimant Dineshwar Prasad as C.W. 7. A bulk of sale-deeds of the vicinity area had also been exhibited in the case. Dineshwar Prasad, one of the claimants who is as an Advocate and another Advocate in the name of Shri Baiju Ram had also been examined to prove the report of the Revenue Inspector Nilpat Singh Munda on the basis of the direction of the Project Officer, Basantpur Washery situated at Charhi. On the other hand, the Central Coalfields Limited for and on behalf of the Union of India as referencer could not produce the report of the Revenue Inspector, on the basis of which, classification had been made. The documents proved for tallying the market value of the land acquire were exhibited as Exts. 1 to 1/J. The learned Court below committed error of law in discarding the sale-deeds Exts. 1, 1/A and 1/J on the ground that those are documents after the notification was made u/s 4(1) of the Act but the assessment is to be made on the basis of the latter notification u/s 9 of the Act which was published as per Ext. 8 on 22-12-1980. So discarding all those documents is definitely not proper. The document of Village Laio had also been discarded stating that those documents are of far-off village than the Village Dania wherefrom the lands had been acquired but the revenue map (Ext. 2) shows that Village Dania and Village Laio are contiguous villages only separated by a streamlet. So discarding all those documents of village Laio is definitely not proper. Classification as claimed by the claimants have been accepted by the learned Court below as per paragraph 11 of the judgment as the Central Coalfields Limited failed to prove that on the spot verification by a Revenue Officer Sri U.P. Sinha, the assessment of classification of land was made and then determined. Thus only the point remains now is as to whether fixation of market value is proper or not. The fact remains that the lands at the time of classification, were classified as don paddy I and Don tanr I lands only. It has also come in evidence by the different witnesses that the Railway Station is connected with Village Dania by a pitch road. Even if the valuation of village Basantpur has been taken by the Central Coalfields Limited for assessment then the same is also wrong. It appears that village Basantpur is of 15 kms. away from Village Dania which is apparent from Exts 7 and 7/A. From Ext. 9, the classification could be re-classified as per the direction of the Project Officer, Basantpur Washery, posted at Charhi. By consideration of all those documents, the learned Tribunal has rightly arrived at the conclusion that the lands acquired were Class I Tanr and Dhan-I only but while determining the compensation, the learned Tribunal has restricted himself to fix the market price of both classes of

land at the rate of Rs. 12,700/- per acre which was determined by the respondent, as already mentioned above. This is the point of challenge in this appeal by the appellant. His case is that even the document Ext. 1 to Ext. 1/J are being considered in true perspective then the valuation must have been fixed at a flat rate not less than Rs. 1,000/- per decimal.

6. Now, it appears that the Central Coalfields Limited had acquired lands in different villages that is village Laio, Dania, Basantpur, etc. etc. The same Tribunal had decided various other reference cases arising out of same acquisition. In one such acquisition case, the parties came up before this Court in M.A. Nos. 18 to 47 of 1993 (R). Those appeals were filed by the Union of India and the assessment of compensation wherein determination of compensation was Rs. 12,000/- per decimal at a flat rate. After consideration of the cases of the parties, Hon"ble Mr. Justice Gurusharan Sharma held that Rs. 600/- per decimal was the proper valuation towards market price of the land at flat rate but lands in respect of those appeals situated at village Laio whereas the present case is related to village Dania. I have already stated that villages Dania and Laio are contiguous village separated by stream-let. No where it has been asserted from the side of the Central Coalfields Limited that there was any discrimination between the lands of villages regarding their classification or the market value. Further, in respect of the lands of Village Dania, one Lakhia Devi in Reference Case No. 12 of 1987 under the Coal Bearing Act came up before this Court against the judgment passed by the same tribunal constituted u/s 14(2) of the Act with the plea that the assessment of valuation was not proper. Hon"ble Mr. Justice R.N. Sahay, in F.A. No. 289 of 1991 (R) allowed the appeal in part by judgment dated 15th November, 1995, and with reference to that judgment, batch of Miscellaneous appeals which were disposed of by Hon"ble Mr. Justice Gurusharan Sharma who arrived at the finding that for village Dania, flat rate of Rs. 500/- per decimal could be the proper compensation. That fixation of market value was accepted by the Central Coalfields Limited but on the matters of grant of solatium and interest at the enhanced rate i.e. the rate fixed by the Legislature by Amendment Act of the Land Acquisition Act was challenged in L.P.A. No. 98 of 1996 (R) and a Division Bench of this Court vide order dated 19-2-1997 rejected that appeal and held that the grant of solatium at the rate of 30% extra compensation/solatium and 5% interest as enhanced interest in addition to the land of compensation and hence the judgment of the Single Judge was proper and justified.

7. Taking the same analogy when the lands of the present reference case are not only similar but also akin to that of Reference Case No. 12 of 1987 against which F.A. No. 289 of 1991 (R) was filed, the market price of the lands of the claimants which were acquired under the Act shall be Rs. 500/- per decimal at flat rate and on consideration of the different sale-deeds exhibited on behalf of the appellants and the potential value being raised in the meantime. This rate cannot be rejected by the Central Coalfields Limited as in the Letters Patent Appeal filed against the above-mentioned First Appeal, they conceded the rate fixed by the

learned Single Judge.

8. Mr. Suresh Prasad, appearing for and on behalf of the respondent-Central Coalfields Limited made an attempt to challenge the grant of solatium at the rate of 30% on the market value in addition and at the enhanced rate of interest as 5% as illegal as there is no provision of solatium or enhanced interest in the Act. Practically, no cross-appeal has been filed against such grant of solatium and enhanced interest, so Mr. Suresh Prasad is debarred from challenging the same as the same is only a money decree and unless specifically challenged, this Court cannot enter into it. Moreover, as already stated in the earlier Letters Patent Appeal in respect of acquisition of lands of the some village, the Central Coalfields Limited challenged the grant of solatium and interest but the same had been rejected and was upheld and, for that reason, perhaps the Central Coalfields Limited has not preferred any cross-appeal in the present case. To substantiate his claim, Mr. Suresh Prasad has referred to a judgment of the Supreme Court in the case of Union of India (UOI) and Others Vs. Dhanwanti Devi and Others, . That case related to Jammu Kashmir Requisition & Acquisition of Immovable Property Act, 1968, wherein also, there was no provision of solatium and interest and the Court held that when there is no such provision, analogy of Land Acquisition Act cannot be taken. This judgment of the Apex Court along with the other judgments passed in Hari Kishan and Prem Nath Kapoor's case passed by the same Apex Court were considered by this Court in a batch case of Miscellaneous Appeal Nos. 38, 39 and 132 of 1994 (R) under the Bihar Requisitioning & Acquisition of Immovable Property Act and held that as the Supreme Court always upheld grant of solatium and interest in the analogy of the amended Land Acquisition Act on the ground of delay of grant of compensation and when the provision of Jammu & Kashmir Act was a bit different from that of the Bihar Act, it was held that solatium and interest can be granted when lands had been acquired under the Requisitioning and Acquisition of Immovable Property Act also. It is true that under the Coal Bearing Act, there is no provision of solatium and interest but that point came again and again before the different Benches of this Court including this Bench.

9. It appears from the judgment of this Court in Union of India through Chief of Revenue, Central Coalfields Ltd. v. Kashinath Mahto and Ors. (1998) 2 BLJR 1430, and some other judgments passed by this Bench also that grant of solatium and interest was always upheld and the Central Government had also considered that position and made a notification that under the Coal Bearing Act also grant of solatium and enhanced interest should be considered on the analogy of the amended Land Acquisition Act as such proposal of amendment of Coal Bearing Act was pending before the Parliament.

10. Mr. Suresh Prasad submitted that the present case is prior to the notification issued by the Central Government. Whether prior or after the notification, the position remains that when there is delay in payment of compensation and there was consent of the Central Government in respect of grant of solatium and

interest, the Central Coalfields Limited cannot raise this point again and again as the same had already been set at rest by the various judgments of this Court.

11. In the result, this appeal is partly allowed by modification of the market value of the acquired land at the rate of Rs. 500/- per decimal including solatium and interest on enhanced fixation at the rate as granted by the Court below and fresh calculation should be made and the balance should be paid as early as possible by the respondent to the claimant. In the circumstances of the case, no cost is awarded to either of the parties.