

(2022) 03 OHC CK 0053
In the Orissa High Court
Case No : ARBA No.02 Of 2019

Gadadhar Pal

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 11-03-2022

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34
National Highways Act, 1956 — Section 3A

Citation : (2022) 03 OHC CK 0053

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : A.P. Bose, S. Satpathy

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. Mr. Bose, learned advocate appears on behalf of appellant in this arbitration appeal. He submits, his client has impugned judgment dated 7th March, 2018 made under section 34 of Arbitration and Conciliation Act, 1996, whereby challenge to award dated 12th December, 2008 was rejected. He submits, the award contains patent illegality inasmuch as there was no basis or fixation of compensation on the land acquired for construction of National Highway 60.

2. He straightaway refers to the award and demonstrates therefrom, his client had produced three sale deeds, one dated 15th September, 2001 executed prior to notification under section 3-A in National Highways Act, 1956. The other two deeds were executed after the notification and he does not press reliance on them. He submits, said sale deed was for 0.04 and ½ decimals of land sold at Rs.8,04,705/- per acre but compensation, upheld by the award and in appeal was at Rs.1,25,000/- per acre. He reiterates, there is no basis for fixing such a low value, when his client had produced a relevant sale deed but the evidence was disregarded on purported contention that it related to a small area of land.

3. Mr. Satpathy, learned advocate, Central Government Counsel appears on behalf of Union of India and submits, State is to answer. He then submits, instructions were sought for but instructions have not been had. He prays for adjournment to file objection. The prayer for adjournment has come after petitioner has been heard on the appeal, being of year 2019 and moved as on 18th January, 2019. The prayer is rejected.

4. Reason given in the award is reproduced below.

"Heard the Counsels of the both sides. Perused the documents filed by the petitioner and the decision of the Hon'ble Supreme Court. The lone sale deed No.2710 dated 15.09.01 filed by the petitioner appears ahat Ac.0.04 ½ dec. of land has been sold @ Rs.8,04,705/- per acre and the rest two sale deeds are after 3-A Notification. The sale deeds which have been executed and registered after 3-A Notification cannot be taken into consideration for determination of compensation. The sale deed which has been executed and registered prior to 3-A notification is for very small area. I presume that the land so sold in the above sale deed is for other than agricultural purpose. Since the area sold is very small it can not be taken into consideration for enhancing compensation in view of the decision of Hon'ble Supreme Court reported in AIR 1971 SC 2015 (V-58, C 414)."

The reason proceeds on presumption that the land sold by sale deed dated 15th September, 2001 is very small area and for other than agricultural purpose. The arbitrator did not disclose reliance on any evidence or factors for adversely presuming against appellant. Nothing appears from the award to show that as on date of the award (12th December, 2008) or soon before, the land sold on 15th September, 2001 had been developed otherwise than for agriculture. Furthermore, reliance on judgment of the Supreme Court in Collector of Lakhimpur v. B.C. Dutta reported in AIR 1971 SC 2015 does not support the reason, as basis of it. In that case claimant for higher compensation had himself claimed at Rs.10,000/- per bigha. Deeds relied on were for comparatively small areas sold at Rs.15,000/- per bigha. The Supreme Court said that in the circumstances Rs.10,000/- per bigha, claimed by claimant himself, was good compensation to be awarded on the relied upon deeds for comparatively much smaller area constituting good evidence. The passage is reproduced below.

"Although the average price of these sales came to Rs.15,000/- per Bigha but when it is considered, as has already been observed, that they were of comparatively much smaller area they would constitute good evidence for fixing the rate at a figure which was originally claimed by the respondent, namely, Rs.10,000/- per Bigha. In other words if the plots covered by the sale had been sold in larger parcels the price likely to be fetched would not have exceeded Rs.10,000/- per Bigha."

Here, there is no basis for compensation fixed at Rs.1,25,000/- per acre to be good compensation in the face of relevant evidence of 0.04 and ½ decimal of land sold prior to the notification at Rs.8,04,705/-.

5. The award is a finding which no reasonable or prudent person would have made. It is perverse and patently illegal. This was not appreciated in the appeal. Impugned judgment and the award are set aside. The arbitrator (District Magistrate) will forthwith revisit the claim for enhancement of compensation and dispose of it as expeditiously as possible..

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