

(2016) 03 PAT CK 0033
In the Patna High Court
Case No : First Appeal No. 35 of 1973

Gajendra Mohan Tiwary and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 11, Section 18, Section 23, Section 24, Section 25, Section 28, Section 3(a), Section 34, Section 4, Section 4(1), Section 54

Citation : (2016) 03 PAT CK 0033

Hon'ble Judges : Mungeshwar Sahoo, J.

Bench : Single Bench

Advocate : T.N. Maitin, Sr. Advocate, for the Appellant; Kundan Bahadur Singh, S.C. 22 and Neeraj Kumar, A.C. to S.C. 22, for the Respondent

Final Decision : Partly Allowed

Judgement

Mungeshwar Sahoo, J.—1. The applicants have filed this First Appeal under Section 54 of the Land Acquisition Act against the judgment and award dated 05.07.1972 passed by the learned Land Acquisition Judge, Muzaffarpur in Land Acquisition Case No. 89 of 1968/110 of 1971.

2. It appears that the Industries Department of the State Government of Bihar started process for acquiring 66.635 acres of land at Bela Chapra for the purpose of establishment of industrial estate. Requisition was issued on 09.06.1962 by Additional Director of Industries. Subsequently, requisition was superseded by letter dated 16.04.1963 whereby acquisition of 66.635 acres was abandoned and process for acquiring 49.13 acres was started. Subsequently, again the site of the industrial estate was changed and the land of K.M.N. Tiwari and others measuring 50 acres was to be acquired on the basis of mutual agreement and possession was taken on the land. The first notification under Section 4 of the L.A. Act is dated 09.06.1962 and the second notification is dated 13.02.1964. In this land acquisition, the lands of the appellants measuring 40.47 acres were acquired. Out of them, class I was 31.32 acres and class II land was 9.15 acres

apart from orchard measuring 4 acres total being 44 acres. The appellants then filed application under Section 18 of the Land Acquisition Act for enhancement of the compensation. The said application was referred to the Land Acquisition Judge. The Land Acquisition Judge amalgamated the land acquisition case of the appellants with other land acquisition cases by which the lands of other land holders were acquired for the same purpose and by the judgment has disposed of the same commonly. The Land Acquisition Judge in the impugned judgment and award held that the prevailing market value of the land acquired was Rs. 500 per katha i.e. Rs. 10,000 per bigha for class I land and 400 per katha for dhanhar land measuring 11.01 acres. The Land Acquisition Judge also enhanced the valuation of the orchard at Rs. 33,600 and thus, total compensation awarded by the Land Acquisition Judge is Rs. 3,13,200 for 31.32 acres at the rate of Rs. 10,000 per acre + 6,000 per acre for 9.15 acres = Rs. 54,900 + market value of the orchard Rs. 33,600 total being Rs. 4,01,700. The Collector had awarded Rs. 2,61,373.75.

3. The learned senior counsel for the appellants submitted that the Court below has not taken into account the potentiality and future value of the land. Various documentary evidences were produced before the Court below but the Land Acquisition Judge wrongly fixed the market value at Rs. 500 per katha and also wrongly calculated Rs. 10,000 per acre because 1 acre = 22 1/2 katha. The learned senior counsel further submitted that the Court below has wrongly not relied on the sale deed, Exhibit 3E wherein 2 katha land was sold for Rs. 2500 in the year 1962 and the land sold was identical as that of the appellant's land. According to this sale deed, the market value comes to Rs. 1250 per katha. Likewise, the Court below has not relied upon Exhibit 3A and 3F which shows that class II lands were sold at the rate of Rs. 400 per katha but the Court below has granted Rs. 300 per katha. The Court below has wrongly granted only Rs. 1,080 for tube well against the claim of the appellants i.e. Rs. 23,700.

4. The learned senior counsel further submitted that for orchard measuring 4 acres, no separate value for the land has been granted and only value of the trees has been given at Rs. 33,600. The learned senior counsel also submitted that the interest under Section 34 of the Land Acquisition Act has not been paid and likewise, interest on solatium as provided under Section 28 of the L.A. Act has also not been paid. On these grounds, the learned senior counsel submitted that the appeal be allowed and the compensation be enhanced by allowing the claim of the appellants.

5. On the other hand, learned S.C.22 submitted that there is no evidence adduced by the parties to the effect that 1 acre = 22 1/2 katha. Therefore, the Court below has rightly calculated the value at Rs. 10,000 per acre i.e. Rs. 500 per katha. So far the report of Mr. Das is concerned, the learned counsel submitted that it was not according to the rule and, therefore, second report was obtained regarding the market value from Mr. J.P. Verma and finding it correct, market value was fixed on the basis of the report. The learned S.C.22 further

submitted that Exhibit 3E, 3A and 3F were the sale deeds during the period when the proposal was there for acquisition of the land and, therefore, to inflate the rate of land the sale deeds were created. Moreover, very small area of lands were sold by these sale deeds, therefore, on the basis of these sale deeds, the market value of large chunk of land cannot be fixed and the Land Acquisition Judge has rightly taking the guidelines on the basis of these sale deeds fixed the market value. So far the orchard is concerned, the learned S.C.22 submitted that the appellant is not entitled to receive separate compensation for the trees and separate compensation for the land. On these grounds, the learned S.C.22 submitted that the impugned judgment and award cannot be interfered with.

6. In view of the above contentions of the parties, the point arises for consideration in this First Appeal is as to "whether the compensation fixed by the Land Acquisition Judge is just and proper compensation" or "whether the appellants are entitled for more compensation" and "whether the impugned judgment and award passed by the Land Acquisition Judge is sustainable in the eye of law?"

7. It is admitted fact that 50 acres of land were acquired for the purpose of Industry Department and proposal was made in the year 1962 as detailed above. The appellant's land measuring 44.45 acres was acquired in the same and for that Rs. 2,61,373.75 was awarded as compensation including the interest etc. which has been received by the appellants. However, according to the appellants, the Land Acquisition Officer has granted meager amount for the lands acquired and has not fixed the market value according to law. In support of his case, the appellants produced documentary evidences. The report of Mr. Das and Mr. J.P. Verma were also produced which have been marked as Exhibit E and E/1. The sale deed Exhibit 3 to 3/I were also produced in support of their claim of compensation at the rate of Rs. 2,000 per katha. On the other hand, the State also produced Exhibit 9B, 7E, Exhibit 5 etc. in support of the market value.

8. Exhibit 3 is the sale deed dated 27.04.1962 by which 5 katha land was transferred for Rs. 2500 on 27.04.1962 i.e. Rs. 500 per katha. Exhibit 3J is sale deed dated 16.08.1961 whereby 1 katha land was sold for Rs. 500. Exhibit 3K is sale deed dated 16.08.1961 whereby 1 katha land was sold for Rs. 500. The main argument is that the Court below should have relied on Exhibit 3E dated 30.04.1962 by which 2 katha land was sold for Rs. 2500 and likewise, in the sale deeds, Exhibit 3A and 3F, small area of land were sold on higher rate.

9. Now therefore, on the basis of these sale deeds, the court has to fix the market value of large chunk of land because in all these sale deeds, only small area were sold which will only give a guideline to the court but the rate cannot be fixed on the basis of the same or the value of the land measuring 2 katha i.e. Rs. 2,500 cannot be made the basis for calculation for the large area of land near about 45 acres. The settled principles of law is that the rate paid for small parcels of land do not provide an useful guide for determining the market value of the land acquired.

10. In a decision reported in , 1996, Volume III, Supreme Court Cases, Page 766(Hookiyar Singh and others Vrs. Special Land Acquisition Officer), the Hon"ble Supreme Court has held that despite the apathy and blatant lapse on the part of the acquiring officer to adduce evidence and also improper or ineffective or lack of interest on the part of the counsel for the State to cross-examine the witnesses on material facts, it is the duty of the Court to carefully scrutinise the evidence and determine just and adequate compensation.

11. As stated above, it was the duty on the part of the claimants to adduce reliable evidence. The Land Acquisition Judge has rightly not relied upon the sale deeds for the reasons stated above. In a recent decision, the Hon"ble Supreme Court in the case of Karnataka Urban Water Supply and Drainage Board Vrs. K.S. Gangadharappa(, 2009, Volume XI, Supreme Court Cases, Page 164) has held at Paragraph 8 as follows:

"8. In Suresh Kumar v. Town Improvement Trust, in a case under the Madhya Pradesh Town Improvement Trusts Act, 1960 this Court held that the rates paid for small parcels of land do not provide a useful guide for determining the market value of the land acquired. While determining the market value of the land acquired, it has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner. It is an accepted principle as laid down in Vyricherla Narayana Gajapatiraju v. Revenue Divl. Officer that the compensation must be determined by reference to the price which a willing vendor might reasonably expect to receive from the willing purchaser. While considering the market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy it must alike be disregarded; neither must be considered as acting under any compulsion. The value of the land is not to be estimated as its value to the purchaser. But similarly this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded. The wish of a particular purchaser, though not his compulsion may always be taken into consideration for what it is worth. Section 23 of the Act enumerates the matters to be considered in determining compensation. The first criterion to be taken into consideration is the market value of the land on the date of the publication of the notification under Section 4(1). Similarly, Section 24 of the Act enumerates the matters which the court shall not take into consideration in determining the compensation. A safeguard is provided in Section 25 of the Act that the amount of compensation to be awarded by the court shall not be less than the amount awarded by the Collector under Section 11. Value of the potentiality is to be determined on such materials as are available and without indulgence in any fits of imagination. Impracticability of determining the potential value is writ large in almost all cases. There is bound to be some amount of guesswork involved while determining the potentiality. "

12. In the case of Ahmedabad Municipal Corporation and others vrs. Shardaben and others, , (1996) 8, Supreme Court Cases 93, the Hon"ble Supreme Court

has held that the burden is always on the claimants to prove by adducing reliable evidence that the compensation offered by the Land Acquisition Officer is inadequate and the lands are capable of fetching higher market value. It is the duty of the Court to closely scrutinise the evidence, apply the test of prudent and willing purchaser i.e. whether he would be willing to purchase in open and normal market conditions of the acquired lands and then determine just and adequate compensation. Likewise in the case of State of U.P. and others vrs. Ram Kumari Devi(Smt.) and others reported in , (1996) 8 Supreme Court Cases 577, the Hon''ble Supreme Court at Paragraph 4 has held as follows:

"4. It is seen that small pieces of land of an extent of 60"x20", 40"x40" and 1600 sq. ft. were sold by the claimants, obviously on coming to know of the proposed acquisition. It is common knowledge that acquisition proposal would be made at an earlier point of time and finalization of acquisition would take a long time. In the process, on becoming aware of the acquisition, obviously, these sale deeds have been brought into existence to inflate the market value. It is laid down by this Court which is a well-settled principle that it is the duty of the court to assess reasonable compensation. Burden is on the owner to prove the prevailing market value. On adduction of evidence by the parties, the acid test which the court has to adopt is that the court has to sit in the armchair of a prudent purchaser, eschew feats of imagination and consider whether a reasonable prudent purchaser in the open market would offer the same price which the court is intending to fix the market value in respect of the acquired land. Since it is a compulsory acquisition, it is but the solemn duty of the court to assess reasonable compensation so as to allow the same to the owner of the land whose property has been acquired by compulsory acquisition and also to avoid needless burden on public exchequer. No feats of imagination would require to bog the mind that when 13.75 acres of land was offered for sale in an open market, no prudent man would have credulity to purchase that land on square foot basis. The High Court as well as the District Judge have committed a grave error in not applying the above acid test while considering the case. They merely proceeded by accepting the sale deeds which were obviously brought into existence to inflate the market value and determined the compensation on the price settled by them. Thus, we hold that both the courts have applied a wrong principle of law in determining the compensation."

13. In the present case, as discussed above, the evidences i.e. the sale deeds produced by the State or the claimants were taken as guideline and then the Court below has fixed the market value.

14. So far the submission of the learned senior counsel for the appellants that the lands involved in the sale deed Exhibit 3E, 3A and 3F are same as that of the appellant is concerned, it may be reiterated that only because the lands are same in nature, the rate cannot be fixed when large area is acquired. In the case of State of U.P. and others (supra), only 13.75 acres land was acquired and the Supreme Court held that no prudent man would have credulity to purchase that

land on square foot basis. Here, it can be said that when 50 acres land is acquired, no person can purchase the same on katha basis. However, the Court below has taken the guideline only and has fixed the market value at Rs. 500 per katha.

15. The grievance of the appellants is that 1 acre=22 1/2 katha, therefore, if the Court below calculated wrongly then, it should be corrected at least. From perusal of the judgment impugned, it appears that the Court below at one place has held that the claimant is claiming Rs. 2,000 per katha that means Rs. 45,500 per acre. This means that 1 acre = 22 1/2 katha, therefore, this can be corrected because the Court below has specifically fixed the rate at Rs. 500 per katha. In other words, the market value will be Rs. 11,250 per acre.

16. From the discussion made above, I find that the appellants failed to prove that the compensation awarded by the Land Acquisition Judge is inadequate and the lands acquired were capable of fetching more price than the compensation awarded.

17. So far the submission that the land and the trees should have been valued separately is concerned, this question has already been settled by the Hon'ble Supreme Court by catena of decisions. In , AIR 1996 Supreme Court 106, State of Haryana v. Gurcharan Singh and another, the Hon'ble Supreme Court has held in paragraphs 3 and 4 as follows :

"3. Ms. Surichi Agarwal, learned counsel for the State, contended that the High Court has committed grave error of law in upholding the determination of the compensation both to the land as well as fruit bearing trees and has also further committed error in enhancing the market value to the fruit bearing trees in addition to the confirmation of the compensation separately awarded for the land and the fruit bearing trees. It is against the settled principle of law as laid down by this Court in catena of decisions. We find force in the contention. Shri Bagga, learned counsel for the respondents, contended that in the year 1966 the price index was at 144 points whereas in 1970 the index was found to be at 213 points. The High Court, therefore, was right in increasing the compensation to the fruit bearing trees by 60%. We find no force in the contention. It is settled law that the Collector or the Court who determines the compensation for the land as well as fruit bearing trees cannot determine them separately. The compensation is to the value of the acquired land. The market value is determined on the basis of the yield. Then necessarily applying suitable multiplier, the compensation need to be awarded. Under no circumstances the Court should allow the compensation on the basis of the nature of the land as well as fruit bearing trees. In other words, market value of the land is determined twice over and one on the basis of the value of the land and again on the basis of the yield got from the fruit bearing trees. The definition of the land includes the benefits to arise from the land as defined in S.3(a) of the Act. After compensation is determined on the basis of the value of the land from the income applying suitable multiplier, then the trees would be valued only as fire-

wood and necessary compensation would be given. In this case, the High Court did not adopt this procedure. We have looked into the figures furnished in the judgment of the High Court of the amount awarded by the Officer himself. He too while determining the compensation at the rate of Rs. 12,240/- per acre on the basis of the yield, the multiplier applied is more than 8 years. Under no circumstances, the multiplier should be more than 8 years multiplier as it is settled law of this Court in catena of decisions that when the market value is determined on the basis of the yield from the trees or plantation, 8 years multiplier shall be appropriate multiplier. For agricultural land 12 years multiplier shall be suitable multiplier.

4. In this case, the Collector applied more than 8 years multiplier and awarded compensation. The High Court also has not adverted to this aspect of the Matter. The High Court committed error of law in further enhancing the compensation. Considered from this perspective, since we cannot interfere with the award of the Collector, though the Collector had committed palpable error of law in separately awarding the compensation to the land as well as fruit bearing trees, it is an offer which cannot be disturbed because of S. 25 of the Acts. The rate of compensation should have been less than what the Collector has awarded, we cannot reduce the amount less than the amount offered by the Collector, yet we have to hold that the Collector, Civil Court and the High Court should have applied 8 years multiplier and determined the compensation. They awarded much more than what the claimant would justly and fairly be entitled to. Therefore, further enhancement of 60% by the High Court on the basis of the Price Index is clearly illegal."

18. From the above decision, it is clear that it is settled law that the Collector or the Court should determine the compensation for the lands as well as fruit bearing trees cannot be determined them separately. The compensation is the value of the acquired land. The market value is determined on the basis of the yield.

19. So far the submission of the learned senior counsel for the appellants that for tube well, meager amount has been paid as against the claim of Rs. 23,000 and odd. In the above decision i.e. AIR 1996 Supreme Court 106, it has been held by the Supreme Court that the definition of the land includes the benefits to arise from the land as defined in Section 3(A) of the Act. Now therefore, the tube well was a benefit attached to the land. In such circumstances, the actual cost of the same cannot be given to the appellants. However, the Court below has awarded some compensation for the tube well, in my opinion, this is just and proper.

20. So far the interest under Section 34 or Section 28 is concerned, the appellants are entitled to the same. Therefore, it can be said that the appellants are entitled to other benefits as provided under the Statute.

21. In view of my above discussion, I find that the compensation awarded by the Land Acquisition Judge is correct and I find no illegality therein. However, the

mistakes, regarding calculation, is corrected here and held that the market value was Rs. 11,250 per acre for the lands which was fixed at Rs. 10,000 per acre and the rest rate fixed by the Court below is hereby confirmed as I do not find any reason to interfere with the same.

22. In the result, this First Appeal is allowed in part. The impugned judgment and award is modified to the extent indicated above.