

(2011) 07 PAT CK 0248
In the Patna High Court
Case No : First Appeal No. 170 of 2007

General Manager, National Thermal Power Corporation	APPELLANT
Vs	
Sachchida Nand Prasad and Another	RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

Citation : (2011) 07 PAT CK 0248

Final Decision : Allowed

Judgement

Mungeshwar Sahoo, J.—All these 4 First Appeals, i.e., First Appeal No. 170 of 2007, 171 of 2007, 172 of 2007 and 174 of 2007 have been filed by the National Thermal Power Corporation against common judgment and Award dated 12th April, 2007 passed by Sri Ganga Sharan Ram Tripathi, the learned Land Acquisition Judge, Bhagalpur in Land Acquisition reference Case No. 363 of 1989, 364 of 1989, 367 of 1989 and 368 of 1989. All the land reference cases arises out of land acquisition case No. 10 of 1984-85.

2. Out of all these First Appeals, in the First Appeal No. 170 of 2007 land measuring 1.91 acres, in First Appeal No. 171 of 2007, land measuring 1.48 acres, in First Appeal No. 172 land measuring 2.20 acres and in First Appeal No. 173 of 2007, land measuring 2.40 acres total measuring 7.99 acres were acquired by the State of Bihar for the purpose of construction of thermal power station by the National Thermal Power Corporation-Appellant. The project for acquisition of land was announced in the year 1984 and construction of thermal power station started in 1985. Notification u/s 4 of the Land Acquisition Act in the present case was published in March, 1986 and the possession of the lands were taken in 1988. Collector awarded Rs. 1,09,552.73 paise for the land measuring 1.91 acres involved in First Appeal No. 170 of 2007, Rs. 81,399.35/- for the land measuring 1.48 acres involved in First Appeal No. 171 of 2007, Rs. 1,21,673.31/- paise for the lands measuring 2.20 acres involved in First Appeal No. 172 of 2007 and Rs. 131998.94/- for the lands measuring 2.14 acres involved in First Appeal No. 173 of 2007. All the claimants filed application u/s 18

of the Land Acquisition Act claiming higher compensation at the rate of Rs. 5,20,000/- per acre. The said application was referred to the Land Acquisition Judge. By the impugned judgment and Award, the learned Land Acquisition Judge fixed the market value of the land at Rs. 1988/- per decimal.

3. The claimants-Respondents' case is that after receiving notice, they filed objection u/s 9 of the L.A. Act but the Collector did not consider and did not pay the compensation as per prevalent market value. The acquired lands were Bhit class I land with irrigation facility and had much potential value and 3 crops were grown per year. Further, State Govt. fixed the market value of the acquired land only at Rs. 35,714/- per acre and on the basis of the said rate, total Rs. 4,44,624.33 paise was paid to the claimants and the claimants received the same with objection. Thereafter, they filed the application u/s 18 of the L.A. Act claiming enhanced compensation at the rate of Rs. 5,20,000/- per acre. Their further case is that the lands acquired are homestead lands and situated in between village Sanju and Kaliganj. There is Electricity Board Office, State Bank of India and English school in the north side of acquired land. The acquired land are near to the Kahalgaon Municipal town and block office and various other institutions. Prior to acquisition, the lands of the Mauja were being sold at the rate of Rs. 5,20,000/- per acre.

4. On the other hand, the Appellant, i.e., National Thermal Power Corporation, Kahalgaon, Bhagalpur objected the claim of the claimants alleging that compensation has been paid to the claimants according to the market value. The claim of the claimants is exaggerated. The market value has been determined taking into consideration the sale instances of adjoining lands of the locality. In fact the acquired lands are Bhit class II and had no irrigation facility nor it was fertile land as claimed by the claimants. No village or any institution or office is near the acquired land.

5. In support of the respective cases, the evidences were adduced. The 4 land reference cases were tried together. Common evidence was recorded. In all cases, 5 witnesses were examined on behalf of the claimants. P.W.1 and P.W.4 are the only two claimants. The claimants also produced 3 sale deeds which are Exhibit 1, 1/A and 1/B. The objection u/s 9 have been marked as Ext. 2 to 2/C and Ext. "3" is the map. The Appellant, N.T.P.C. had also examined one witness and has produced Ext. "A" the valuation Khatiyan, Ext. "B" the Award, Ext. "C" is the rate report and Ext. "D" is the estimate, Ext. "E" and E1 are two sale deeds.

6. Now, let us consider the evidences of the parties. P.W.1 has stated that the acquired lands are Bhit I land and are fit for homestead purpose. Several villages are situated near the acquired land and also there are public institutions. P.W.2 has stated that the lands were very fertile and vegetable were grown. P.W.3 has stated that the lands were homestead land. There were houses near the acquired lands. The acquired lands were being irrigated through well and 3 crops were being grown. He had further stated that prior to acquisition, he had purchased

one Kattha land in village Shampur for Rs. 13,000/- in the year 1985. The lands he purchased were similar to the lands acquired by the State. His sale deed has been marked as Ext. 1. P.W.4, Sachhidanand Prasad who is one of the claimant and also Advocate has supported the case made out in the application u/s 18 of the Land Acquisition Act. He has further stated that at the time of acquisition, the lands were being sold at the rate of Rs. 10,000/- to Rs. 15,000/- per Kattha in the villages. Such is the evidence of P.W.5. On the contrary, O.P.W.1 who is engineer, in his evidence has stated that all the lands acquired were Bhit II lands and there were no irrigation facilities. There were no villages, houses or offices near the acquired land. This witness has also denied the claim of the claimants regarding higher compensation.

7. After considering these evidences, the learned Court below by the impugned judgment and Award enhanced the compensation as stated above.

8. Mr. Anil Kumar Sinha, the learned Counsel appearing on behalf of the Appellant submitted that on the basis of oral evidences, the market value cannot be determined. Naturally, the claimants will make exaggerated statements regarding the value of the land acquired. Therefore, the parties produced documentary evidences also, i.e., the sale deeds. The Appellants produced Ext. "E" and Ext. "E/1". Ext. "E" is dated 20.11.85 by which 16 decimals lands were sold. Ext. "E/1" is dated 19.04.1983 by which 27 decimals land was sold. So far Ext. "E" is concerned, on calculation, the rate of land comes to Rs. 250/- per decimals whereas on calculation, the rate of land of Ext. "E/1" comes to Rs. 148/- per decimal. The learned Court below wrongly discarded both these exhibits on the ground that if these sale deeds are taken into consideration then the market value will be less than the rate awarded by the Collector. The learned Counsel further submitted that the learned Court below failed to consider the fact that these sale deeds involved larger area and the Collector awarded more than the value fixed in these sale deeds. These sale deeds were produced by the Appellant to show that in fact the Collector awarded sufficient and adequate compensation for the lands acquired. The Appellants never prayed for reduction of the compensation awarded by the Collector, therefore, the learned Court below has wrongly not relied upon these two sale deeds which are comparable sale instances.

9. The learned Counsel further submitted that since the project for construction for thermal power station was pronounced in the year 1984 to increase the rate of land with a view to get higher compensation many sale deeds were created with regard to small areas of lands. The Ext. 1 series which have been produced by the claimants involved in each of the sale deeds very small areas of land. Ext. 1 involved 1.25 decimal which is dated 03.12.1985. Ext. 1/A is dated 05.11.1985 for 2.5 decimal whereas Ext. 1/B is dated 03.12.1985 for 10 dhurs only. In such view of the matter when the comparable sale instances were available on record, i.e., Ext. E and E/1, the learned Court below should not have considered or relied upon or based the determination of compensation on Ext. 1 series because very

small areas of land were involved in these sale deeds and moreover the area sold or purchased in these sale deeds clearly indicates that those were for the purpose of construction of house whereas in the present case, it is specifically stated by the claimants that the lands acquired are agricultural land. The learned Counsel for the Appellant relied upon a decision reported in State of Uttar Pradesh etc. Vs. Smt. Ram Kumari Devi etc., and State of Jammu & Kashmir Vs. Mohammad Mateen Wani and Others, On these grounds, the learned Counsel for the Appellant submitted that the impugned judgment and Award passed by the Land Acquisition Judge is liable to be set aside as the claimant have been given adequate and proper compensation by the Collector.

10. On the other hand, the learned Counsel, Mr. Ganapathy Trivedi appearing on behalf of the claimants-Respondent in all the 4 First Appeals submitted that there is no evidence on record to show that for the purpose of inflation of rate of the land, the sale deeds Ext. 1 series were created by the purchasers and in absence of such evidence, there can be no presumption that the sale deeds have been created for the purpose of enhancement of compensation. The learned Counsel further submitted that the learned Court below has rightly not relied upon Ext. "E" and E/1 because if those sale deeds are based for determination of compensation, the market value of the land will be less than the compensation awarded by the Collector. The Land Acquisition Judge has no jurisdiction to award less than the compensation awarded by the Collector because Collector on behalf of the State offered the compensation to the land holders. The question is whether the claimants are entitled for the higher compensation then offered by the Collector and not the question that whether offered made by Collector should be reduced or not. The learned Counsel relied upon Administrator General of West Bengal Vs. Collector, Varanasi, The learned Counsel further submitted that the learned Court below has rightly relied upon Ext. 1 series and has given deduction for the development and on the prayer of the Appellant, further deduction of 10 per cent has been granted for making the lands acquired comparable with the lands involved in Ext. 1 series. Therefore, in this First Appeal, the impugned judgment and Award warrants no interference.

11. In view of the above contentions of the parties, the points arises for consideration in these First Appeals are whether the compensation awarded by the Land Acquisition Officer is correct, reasonable and adequate compensation or whether the compensation enhanced by the Land Acquisition Judge by the impugned judgment and Award is correct and adequate and, therefore, sustainable in the eye of law.

12. We have discussed above the oral evidences adduced by the parties. The witnesses have in general stated that the market value of the lands acquired was Rs..5,20,000/- at the time of acquisition of the same. The lands were fertile lands and, there were irrigation facility. On the contrary, according to the O.P.W.1, the lands were neither fertile nor there was irrigation facility. However, as stated above in the present case, so far oral evidences are concerned, those

cannot be based for determination of the prevalent market value. Therefore, here so far oral evidences are concerned, those are oral evidence v. oral evidence.

13. Ext. 1 is the sale deed dated 03.12.1985 whereby 1.25 decimal land was sold for 6,500/-. On calculation, it comes to Rs. 5200/- per decimal. Ext. 1/a is dated 05.11.1985 whereby 2.5 decimal of land was sold for Rs. 10,500/- On calculation, the rates comes to Rs. 4200/- per decimal. Ext. 1/b is dated 03.12.1985 by which 10 dhur was sold for Rs. 6500/-. On calculation the rate comes to Rs. 4200/- per decimal. From the above fact, it appears that all these 3 sale deeds which are relied upon by the claimants are of the year 1985, i.e., after pronouncement of the project for construction of thermal power station. As stated above, the project was pronounced in the year 1984. This fact is not denied rather it is admitted. It may be mentioned here that for the acquisition of lands of different villages, notification u/s 4 of the Land Acquisition Act were issued on different dates, however, the project was announced in the year 1984 which would be evident from the judgment passed in First Appeal No. 633 of 2000 with First Appeal No. 177 of 2001 on 4th January, 2011 by this Court. No doubt, there is evidence on the record to show that these sale deeds have been created to inflat the market value but the nature of the land sold and the area involved indicates that on coming to know the proposed acquisition the people started selling or purchasing small areas of land. In other words, the purchases were made in haste and for the purpose of construction of houses.

14. In the case of State of Uttar Pradesh etc. Vs. Smt. Ram Kumari Devi etc., the Hon"ble SC at paragraph 4 has held as follows:

4. It is seen that small pieces of land of an extent of 60" x 20", 40" x 40" 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 finalisation 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.

15. In the present case at our hand, 8 acres lands have been acquired. According to the claimants themselves, all these lands are agricultural lands. It cannot be believed that when 8 acres of land is offered for sale in an open market, any willing purchaser will purchase the said land on dismissal basis. The decision above referred to clearly applies in the present case. It is well settled principle of law that the sale instances could be based for determination of the market value if it is bonafide transaction and it should be a sale of the land acquired area or the land adjacent to one acquired and further it should possess similar advantage. The valuation of small plots need not be taken as real basis for determination of market value of acquired land. It is also well settled principle of law that the burden of establishing /proving the market value of the lands is always on the claimants. In the case of Sagunthala (Dead) through LRs. Vs. Special Tehsildar (L.A.) and Others, the Apex Court has held that the burden to prove the market value of the land is always on the claimants. Also burden of proving that the amount of compensation awarded by the Collector is inadequate lies upon the claimants and he is in the position of a Plaintiff.

16. In the case of P. Venkataraju Vs. Special Tehsildar (Land Acquisition), the Hon"ble SC at paragraph 3 has held as follows:

The only question is whether the Appellant is entitled to compensation @ Rs. 22,000 per acre. It is seen that when the Project was inaugurated on 28-8-1976, all these documents obviously had been brought up for inflating the market value. Unfortunately, all these facts were not brought to the notice of the learned Single Judge when he confirmed the compensation of the land at the rate of Rs. 22,000 per acre. It is settled law that it is the duty of the court to consider the evidence in proper perspective and to determine the compensation. In each case, the court sitting in the armchair of a hypothetical willing purchaser would as a prudent person offer the market value when the owner offered the land for sale. Once the project was inaugurated and the lands were acquired, no prudent person would come forward and purchase the same at higher rates. It may be depressed sales in case of acute necessity and urgency of the seller for money. Under these circumstances, we hold that the sale deeds were brought-up sales and the enhancement was not justified. We do not propose to interfere with the matter and cannot also enhance the market value.

17. It is well settled that when there is no comparable sale instances then the Court can take into consideration the sale instances of smaller area as guideline and may make necessary deduction for determining the value of the large chunk of lands acquired. Here, in the present case, the Appellant produced Ext. "E" and "E/1" which are dated 20.11.1985 and 19.04.1983. Ext. "E" involved 16 decimal

whereas E/1 involved 27 decimal. The sale deeds are of the same village. The areas are larger and that the lands were agricultural lands. From calculation, it appears that the rate of land per decimal in Ext. "E" comes to Rs. 250/- per decimal whereas in Ext. E/1, the rate comes to Rs. 148/- per decimal. Ext. E/1 is prior to pronouncement of project whereas Ext. "E" is after pronouncement of project. Both the sale deeds show that much larger area have been sold by the sale deeds and also the sale deeds indicate the inflation of rate from the year 1983 to 1985. In the year 1983, the rate of one decimal was about 150/- which increased in 2 1/2 years to Rs. 250/- per decimal. These sale instances are comparable sale instances for the purpose of determining the market value of the lands acquired. However, from perusal of the impugned Judgment, it appears that the learned Court below discarded both these sale deeds on the ground that if these sale deeds are taken into consideration the rate of land will be less than the rate awarded by the Collector. In my opinion, the approach of the learned Court below is wrong. It may be mentioned here that the Appellant never prayed for decreasing compensation awarded by the Collector. Appellants' case is that look here during this period, the rate of the land was Rs. 250/- per decimal. The Collector has awarded more than the prevalent market value of the land, i.e., Rs. 357.14/- per decimal (on calculation). Therefore, the Collector awarded adequate and proper compensation which cannot be enhanced by the Land Acquisition reference Court. The learned Court below failed to take into consideration this aspect of the matter.

18. So far the decision relied upon by the Appellant, i.e., Administrator General of West Bengal (Supra), the Hon'ble SC has given guideline for determination of market value. The learned counsel relied upon paragraph 6 of the said judgment wherein it has been held that it is trite proposition that price fetched for small plots cannot form safe bases for valuation of large tracks of land. It has also been held that the principles require that price fetched for small area cannot directly be adopted in valuing large area. In such case, necessary deduction were required to be made. As stated in detail in the said paragraph and in that case, 53 per cent deduction was made. So far this principle is concerned, there is no dispute. It is well settled but this principle will apply where there are no comparable sale instances. Here, the comparable sale instances have been produced by the Appellants but the learned Court below discarded the said comparable sale instances on the ground that if it is considered, the rate will be less than the award of the Collector. As stated above, in my opinion, the approach of the learned Court below is not acceptable.

19. In Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., special Dy. Collector and Anr v. Kurra Sambasiva Rao and Ors., the Apex Court at paragraph 7 has held as follows:

Whether fair and reasonable and adequate market value is always a question of fact depends on the evidence adduced, circumstantial evidence, and probabilities arising in each case. The guiding star or the acid test would be whether a

hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions prevailing in the open market in the locality in which the acquired lands are situated as on the date of the notification u/s 4(1) of the Act; but not an anxious buyer dealing at arm's length with throw away price, nor fake sale or fictitious sales brought about in quick succession or otherwise to inflate the market value. The judge should sit in the arm chair of the said willing buyer and seek an answer to the question whether in the given set of circumstances as a prudent buyer he would offer the same market value which the court proposed to fix for the acquired lands in the available market conditions. The court is, therefore, enjoined with the bounden duty of public function and judicial dispensation in determination of the market value of the acquired land and compulsory acquisition.

20. Therefore, from the above decision also it becomes now clear that the acid test would be whether a hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions prevailing in the open market in the locality but not an anxious buyer dealing at arm's length with throw away price.

21. In my opinion, therefore, the decision cited by the Appellant is not in support of the claimant's case.

22. The learned Counsel for the Respondents relied upon a judgment of this Court dated 22nd April, 2011 passed in First Appeal No. 181 of 2007 wherein also N.T.P.C. is Appellant. The learned Counsel relying upon this judgment stated that in that case, the sale instances were taken into consideration and 53 per cent were deducted and, thereafter, again 10 per cent were deducted which has been upheld by this Court. From perusal of the said Judgment, it appears that in that case sale deeds filed by the claimant were prior to pronouncement of scheme, i.e. of the year 1983. Only one sale deed was of the year 1985. So far this sale deed of the year 1985 is concerned, it involved only 1 katha 10 dhur whereas in other two sale deeds where the land sold were 20 decimals and 10 decimals. Moreover in that case, the lands acquired was only 51 decimal and the rate of land was fixed at Rs. 1,125/- per decimal. Here the fact is otherwise. The sale deeds are after pronouncement of the project and in all the sale deeds very small areas have been sold. As has been held by the Apex Court in the case of Special Dy. Collector (Supra), the question of fair, reasonable and adequate market value is always a question of fact depends on the evidence adduced circumstantial evidence in each cases. Therefore, the judgment relied upon by the learned Counsel for the claimants-Respondents has got no application in the present case. As stated above here, 8 acres have been acquired whereas in that case only 51 decimal was acquired. The sale deeds relied upon in that case was prior to pronouncement of project whereas in the present case, all the sale deeds relied upon by the claimants are after pronouncement of the project.

23. In Hookiyar Singh etc.etc. Vs. Special Land Acquisition Officer, Moradabad

and another, the Hon"ble SC has held that it is settled law that the burden of proof of market value prevailing as on the date of publication of notification u/s 4(1) of the L.A. Act is always on the claimants. The Hon"ble SC has also held that though 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 counsel for the State to examine the witnesses, on material facts, it is the duty of the court to carefully scrutinize the evidence and determine just and adequate compensation. All these decisions of the Hon"ble SC clearly speaks that it is the burden of the claimants to satisfy the Court that the compensation awarded by the Land Acquisition Officer is inadequate.

24. In view of my above discussion, I find that the learned Court below has wrongly relied upon Ext.1, 1/a and 1/b and make the said sale deeds basis for decision in determining the market value of the lands acquired. I also find that Ext. "E" and "E/1" are comparable sale instances filed by the Appellant which were wrongly not relied upon by the learned Court below. Had the learned Court below relied upon Ext. "E" and E/1, the finding of the learned Court below would have been otherwise. The reasoning assigned by the learned Court below for not relying Ext. "E" and E/1 are not sound reason nor is acceptable. On the contrary, these sale deeds clearly show the prevalent market value during the period 1983 to 1985. It also shows the rate at which the value of the land was increased. There is no reason as to why these sale deeds be not taken into consideration as guideline. Once these sale deeds are taken into consideration, the only conclusion will be that the Collector has awarded more rates than the prevalent market rate. Therefore, in my opinion, the award of the Collector is just and proper. I, therefore, find that the claimants-Respondents have failed to discharge their burden to show that the compensation awarded by the Collector is inadequate and that the lands acquired were capable of fetching more value. I, therefore, ultimately find that the learned Land Acquisition Judge has increased the compensation on the basis of the unreliable sale deeds Ext. 1 series and has wrongly not relied the reliable evidences, i.e., Ext. "E" and "E/1". Therefore, the impugned judgment and Award passed by the Land Acquisition Judge is not sustainable in the eye of law. Since, I have already held that the Award given by the Collector is just and proper, the impugned judgment and Award are liable to be set aside.

25. In the result, all these 4 First Appeals are allowed and the impugned judgment and Award are set aside. In the facts and circumstances of the case, there shall be no order as to costs.