
(2011) 04 PAT CK 0169
In the Patna High Court
Case No : First Appeal No. 181 of 2007

General Manager, NTPC

APPELLANT

Vs

Badri Singh and Another

RESPONDENT

Date of Decision : 22-04-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4, 51A

Citation : (2011) 04 PAT CK 0169

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mungeshwar Sahoo, J.—This First Appeal has been filed by the Appellant, N.T.P.C. against the judgment and award dated 24.05.2007 passed by Sri Ganga Sharan Ram Tripathi, the learned Land Acquisition Judge, Bhagalpur in L.A.R. Case No. 161 of 1989 enhancing the compensation in favour of the applicant-Respondent, Badri Singh.

2. The land comprised within plot No. 1329 measuring 51 decimals of village Bholsar, P.S. Kahalgaon, District- Bhagalpur belonging to the Respondent No. 1 was acquired in L.A. Case No. 33 of 1984-85 for the purpose of construction of Thermal Plant. The notification u/s 4(i) of the L.A. Act was published on 16.11.1985. The Land Acquisition Officer awarded a sum of Rs. 7,126.73. The applicant-Respondent No. 1 received the said amount on protest and filed application u/s 18 of the Land Acquisition Act claiming compensation at the rate of Rs. 5,000 per decimal. According to the applicant-Respondent, the acquired lands are very fertile and productive. The land was also near to village Bholsar, near to Ekchari Railway Station, Girls High School and Mahgama Pucca Road passed through the acquired land. The lands can be used as homestead land. The land was also irrigated through pucca boring and the applicant was growing wheat, maize, potato, chilly and other vegetables and earning Rs. 5,000 per katha per annum and also claimed Rs. 5,000 for crops per year. In total, the

applicant claimed Rs. 10,000 per katha (4 lacs per acre) and also Rs. 5,000 for crops per year. The said application was referred to the Land Acquisition Judge.

3. The State of Bihar, Respondent No. 2 did not file any objection to the claim of the applicant. However, the Appellant, N.T.P.C. who was opposite party No. 2 filed an objection on 18.04.1996 alleging that the claim made by the applicant to the tune of Rs. 4 lacs per acre and Rs. 5,000 for the crops has rightly been rejected by the Land Acquisition Officer. The compensation awarded by the Land Acquisition Officer is proper and just. It was further alleged that the lands acquired was un-irrigated and the value of the land at the rate of Rs. 10,000 per katha claimed by the applicant is unacceptable. The land acquired was Bhith-II class land.

4. After trial, the Land Acquisition Judge by the impugned judgment and award determined the value of the land at the rate of Rs. 1439 per decimal. However, the claim of Rs. 5,000 for the damage of crops is concerned, it was rejected.

5. The learned Counsel, Mr. Anil Kumar Sinha appearing on behalf of the Appellant submitted that the compensation awarded by the Land Acquisition Judge is proper and just but the learned Land Acquisition Judge has enhanced the compensation without considering the documentary evidences produced by the Appellant. The learned Counsel further submitted that the sale deeds produced by the applicant i.e. Exhibit-1 series were not admissible and on the basis of the said sale deeds, the prevalent market value of the land could not have been determined. The learned Counsel further submitted that the sale deed produced by the Appellant, Exhibit-F has wrongly been not relied upon by the learned Court below. Moreover, while calculating the average of the consideration amount of three sale deeds i.e. Exhibit-1, 1/A and 1/B, the learned Court below has wrongly calculated the average amount to be Rs. 9,052. The average comes to Rs. 7,975 and, therefore, it is a mistake apparent on the face of record. On these grounds, the learned Counsel submitted that the impugned judgment and award are liable to be set aside.

6. On the other hand, Ms. Sushmita Mishra, the learned Counsel appearing on behalf of the applicant-Respondent No. 1 submitted that out of three sale deeds produced by the applicant, two sale deeds are of the year 1983 i.e. previous to the year of notification u/s 4(i) of the L.A. Act. However, the learned Counsel admitted that there is some error in calculation while finding out the average. According to the learned Counsel since some of the sale deeds filed by the applicant relates to small area therefore, the learned Court below has deducted 53% from the consideration amount. The Appellant was further praying for 20% deduction on account of development and the learned Court below accepted the submission of the Appellant and also further deducted 10% from the average consideration and found out the market value of the land. In such circumstances, the prayer of the Appellant has already been considered by the Court below and has been allowed also. Accordingly, there is no merit in this First Appeal. On these grounds, the learned Counsel submitted that this First Appeal is liable to

the dismissed.

7. In view of the above contentions of the parties, the point arises for consideration is "whether the compensation awarded by the Land Acquisition Judge determining the prevalent market rate of the acquired land at the rate of Rs. 1439 is just and proper and sustainable in the eye of law or it is exaggerated" and "whether the impugned judgment and award are sustainable in the eye of law?"

8. In this case, the parties have adduced oral as well documentary evidences. The State of Bihar, Respondent No. 2 has not filed any objection to the application u/s 18 of the L.A. Act filed by the Respondent No. 2. Since the land was acquired for the purpose of N.T.P.C., Appellant, the reference case was contested by the Appellant.

9. P.W. 1 is the claimant himself. In his evidence, he has stated that the prevalent market rate of the similar land was Rs. 10,000-15,000 per katha prior to acquisition. The witness has further stated that the acquired land was near to Ekchari Railway Station, Girls High School, Market and Road. From the acquired land, the witness was earning Rs. 5,000 per crop and at the time of acquisition, there was potato crop which was damaged by N.T.P.C. P.W. 2 also stated that the prevalent market value on similar land was Rs. 5,000-7,000 per katha prior to acquisition and he has purchased 20 decimals of land in the year 1983 at the rate was Rs. 5,000 per katha. He has also stated that his brother has also purchased 10 decimals of land at the rate of Rs. 10,000 per katha. This witness has also stated that the acquired land was being irrigated by pucca boring Well and wheat, maize, potato and onion were cultivated. The land is also near to Railway Station, market etc. The other witnesses P.W. 3 to P.W. 5 have also supported the case of the applicant about the value of the land. The applicant-Respondent has also produced documentary evidences i.e the sale deeds. Exhibit-1 is the registered sale deed dated 05.10.1983 for Rs. 40,000 for 8 katha. According to this witness, he has purchased 20 decimals. Therefore, 8 katha is equal to 20 decimals was purchased by P.W. 2 on 05.10.1983 for Rs. 40,000. Therefore, the value of 1 decimal will be Rs. 2,000. Likewise, P.W. 4 purchased 10 decimals of land through registered sale deed dated 04.10.1983 (Exhibit-1/B). By this registered sale deed, 4 katha was sold for Rs. 20,000. Exhibit-1/A is the registered sale deed dated 01.07.1985. By this registered sale deed, 1 katha 10 dhurs equal to 3? decimal was sold for Rs. 15,000. From perusal of the impugned judgment, it appears that the learned Court below found that the lands covered under these sale deeds are in the vicinity of the lands acquired.

10. The learned Counsel for the Appellant submitted that the Appellant has filed Exhibit-F, the sale deed dated 11.03.1985 and submitted that the learned Court below has wrongly not relied upon this Exhibit-F on the ground that either the seller or purchaser has not been examined. From perusal of the impugned judgment, it appears that the learned Court below has discarded this Exhibit on

the ground that the vendor or the vendee has not been examined without considering Section 51(A) of the Land Acquisition Act which has been introduced by amendment in the year 1984. Now, therefore, this Exhibit-F is required to be considered. This Exhibit-F is dated 11.03.1985 by which 35 decimals land was sold for Rs. 1500. There is no evidence on record to show that the lands involved in the said Exhibit are similar to that of the lands acquired or that the said land is in the vicinity of the lands acquired. On the contrary, the witnesses examined on behalf of the applicants have clearly stated that the lands involved in Exhibit-1 series are in the vicinity of the lands acquired and the nature is similar to that of the lands acquired. In such circumstances, the sale deed Exhibit-F cannot be based for determining the prevalent market rate of the acquired land. The witnesses O.P.W. 1 and O.P.W. 2 have been examined on behalf of the Appellant. O.P.W. 1 is Amin who has proved the award (Exhibit-A), the valuation khatiyan (Exhibit-B), rate report (Exhibit-C) and estimate (Exhibit-D). The learned Counsel for the applicant-Respondent, so far these documents are concerned submitted that, all these documents are the self prepared documents of the Appellant and, therefore, on the basis of the said documents, market value would not have been determined and the learned Court below has rightly not relied upon said documents. I find force on the submission of the learned Counsel for the Respondent No. 1.

11. O.P.W. 2 is the Engineer of N.T.P.C., Kahalgaon. He has stated that only one crop is being produced in the acquired land which is Bhith class II land and it remained flooded upto 2-3 months during rainy season. There is no house in the vicinity of the acquired land.

12. The learned Counsel for the Appellant submitted that the lands involved in Exhibit-1 series are small piece of land and, therefore, on the basis of these sale deeds, the prevalent market rate would not have been determined. We have seen above that one sale deed relates to 20 decimals and the other sale deeds relate to 10 decimals. The area of the acquired land is 51 decimals. Therefore, it cannot be said that these two sale deeds cannot form the basis for determining the market value. The only one sale deed which relates to 1 katha 10 dhurs i.e. 37 decimals involved small area. However, from perusal of the impugned judgment, it appears that the learned Court below has taken the average of these three sale deeds. Here, it may be mentioned that two of the sale deeds are of the year 1983 prior to declaration for acquisition and according to the witnesses, the lands are in the vicinity of the acquired land. In such view of the matter, I do not find force in the submission of the learned Counsel for the Appellant. The learned Counsel for the Appellant next submitted that while finding out the average of 3 sale deeds, the learned Court below has committed a mistake which should be corrected. So far this mistake is concerned, the learned Counsel for the Respondent also conceded to this effect. The mistake relates to Exhibit-1. As stated above, the witness has stated that he has purchased 20 decimals. In the sale deed, 8 katha has been mentioned. It is admitted that 8 katha is equal to 20 decimals. The consideration amount is Rs.

40,000. Therefore, the value of 1 decimal will be Rs. 2,000. However, from perusal of page 11 i.e. last portion of paragraph 9, it appears that the learned Court below wrongly held that the sale deed relates to 13 decimals and, therefore, wrongly calculated the rate of 1 decimal to be Rs. 3,077. This wrong calculation will be evident from the consideration of Exhibit-1B also. By this Exhibit-1B, 4 katha land was sold. The learned Court below held that 4 katha is equal to 10 decimals. Therefore, naturally 8 katha will be 20 decimals. In such view of the matter, now, the average of 3 sale deeds will be Rs. 2,000 + Rs. 4,000 + Rs. 1,975 = Rs. 7,975 instead of Rs. 9,052.

13. The learned Counsel further submitted that the lands involved in the sale deeds are of small area. So far this submission is concerned, it appears that the learned Court below considering this aspect has deducted 53%. Now, 53% is deducted from the average i.e. Rs. 7,975 divided by 3 is equal to Rs. 2,658 per decimal from which 53% is to be deducted which comes to Rs. 1,250. On the ground of development, the learned Court below has deducted 10% further. On deduction of 10% i.e. Rs. 1,250 - Rs. 125 = Rs. 1,125 per decimal. In view of the above facts and submission of the parties, taking into consideration the three sale deeds produced by the applicant and the calculation and deduction made by the Court below, the prevalent market value per decimal will be Rs. 1,125 and not Rs. 1,439. It appears that this is the mistake of calculation which is apparent on the face of the record. In my opinion, therefore, it requires correction.

14. In view of my above discussion, I find no reason to interfere with the impugned judgment and award. The learned Court below has rightly relied upon these three sale deeds for determining the prevalent market rate of the acquired land. However, while making calculation, mistake was committed as indicated above. I, therefore, find that the prevalent market rate of the acquired land on the date of acquisition was Rs. 1,125 per decimal. The applicant-Respondent No. 1 is therefore, entitled to this rate along with other statutory benefits on this amount which has been granted by the Court below.

15. In view of my above finding, this First Appeal is allowed in part and the impugned judgment and award are modified to the extent indicated above. The parties shall bear their own costs.