(2011) 04 PAT CK 0271

In the Patna High Court

Case No : First Appeal No. 315 of 2003

General Manager, NTPC APPELLANT

Vs

Shiv Prasad Yadav and Another RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Citation : (2011) 04 PAT CK 0271

Final Decision : Allowed

Judgement

Mungeshwar Sahoo, J.—This first appeal has been filed against the judgment and award dated 3rd July 2003 (award signed on 19th July 2003) passed by Sri Saghir Ahmad, the learned Land Acquisition Judge, Bhagalpur in Land Acquisition Reference Case No. 180 of 1992 enhancing the compensation awarded by the Land Acquisition Officer.

2. The claimant-Respondent No. 1 Shiv Prasad Yadav filed an application u/s 18 of the Land Acquisition Act claiming higher compensation in respect of his land measuring 80 decimal which was acquired by the State of Bihar for the Appellant for construction of thermal plant. The lands were notified for acquisition on 12.8.1986. By declaration No. 3660 dated 21.11.1988 the lands involved in this appeal was declared to be acquired. The Land Acquisition Officer awarded a total compensation of Rs.28,102.28 paise. The claimants received the said amount under protest and the application u/s 18 was filed praying for reference. The claimants claimed compensation of the land @ Rs.7,00,000/- per acre, Rs.20,000/- for severance of land and Rs.20,000/- for the damage of crops. According to the claimants, the lands acquired had its potential value which was Bhit class-I land and fit for residential purpose. The said land is surrounded by thickly populated villages and also surrounded by Kahalgaon-Bhagalpur road and Kahalgaon-Sobnathpur road. The acquired land was also irrigated through Pacca well of nearby block and the petitioner was earning Rs.20,000/- from the lands. Out of 2 acres 21 decimal only 80 decimal has been acquired which completely decreased the potentiality of the remaining land.

3. The case of the Appellant is that at the time of taking possession of the suit land there was no crops and possession was taken in the month of September 1990. The claimants had not suffered any damage because of part acquisition. The compensation awarded by the Collector is just and proper.

4. The learned court below framed the following points for consideration:

(i) Is the petition under reference, maintainable?

(ii) Was the land of the Petitioner, valuable for which market value was Rs. 7,00,000/- (rupees seven lacs) per acre?

(iii) Whether there were any standing crops, which resulted in damage at the time of taking possession?

(iv) Is the Petitioner entitled to receive the compensation at the rate of Rs. 7,000/- (rupees seven thousand) per decimal, as claimed?

(v) Is the Petitioner entitled to receive more reliefs, as claimed, due to severance of land etc.?

(vi) Is the award of Collector, Bhagalpur, fit to be confirmed or set aside or modified?

5. The claimants and the Appellant examined witnesses and also produced documentary evidences. The learned court below after trial found that the prevalent rate of the lands acquired was not below Rs. 2000/- per decimal at the time of acquisition and, therefore, fixed the market value of the land at Rs. 2000/- per decimal. The learned court below did not allow the compensation claimed by the Appellant i.e. Rs. 20,000/- on account of damage of crops and Rs. 20,000/- on account of part acquisition.

6. The learned senior counsel Mr. Pandey appearing on behalf of the Appellant submitted that the learned court below has wrongly relied upon the sale deeds produced by the claimants and made the sales deeds basis for determining the market value of the lands acquired because the lands involved in the said sale deeds are homestead land and the same were acquired for the purpose of construction of school by mission. There were roads by the side of the lands involved in the sale deeds but in the present case the acquired land was not by the side of road. Therefore, the nature of the land involved in the sale deed and the nature of the lands acquired are not similar and, therefore, the sale deeds could not have been made basis for determining the compensation. The learned Counsel further submitted that on coming to know that the lands are going to be acquired some small lands were sold for the purposes of creating evidence to get enhanced compensation and in the present case the sale deeds have been executed for that purpose. On these grounds, the learned Counsel submitted that the impugned judgment and award are liable to be set aside.

7. On the other hand, the learned senior counsel Mr. Sinha appearing on behalf of Respondent No. 1-claimant submitted that there is no evidence available on

record to the effect that the documents have been created for the purposes of enhancement of compensation. The lands involved in the sale deeds are not of small area. The sale deed covers the lands of the same village and generally the market value of the lands of one village is same. It cannot be said that only because some land is by the side of road the value of that land will be more than the agricultural land of the same village. The learned court below has considered all these aspects of the matter and came to the conclusion that the market value of the lands acquired cannot be less than Rs. 2000/-. All the sale deeds produced by the claimants are of the year 1987 and in three sale deeds 25 decimal lands have been sold. On these grounds, the learned Counsel submitted that the first appeal is liable to be dismissed.

8. In view of the above contentions of the parities, the points arise for consideration in this appeal is, as to whether the prevalent market value determined by the court below is just, proper or excessive and whether the impugned judgment and award are sustainable in the eye of law.

9. In this case admittedly, the learned court below fixed the prevalent market value of the lands acquired on the basis of the sale deeds only which are Ext. 1 series filed on behalf of the claimants. The oral evidences were also adduced by the claimants. PW 1 is the claimant himself, he has fully supported his case. He has stated that three crops were grown on the lands acquired such as Potato, Wheat, Maize, Dalhan ect. At the time of acquisition prevalent rate of lands was Rs. 10,000/- to 12,000/- per kattha. The acquired land is surrounded by many villages where there are school, market etc. and he used to earn Rs. 20,000/- per annum from acquired land. PW 2 has stated that the rate of land in the vicinity was about Rs. 7000-8000 per kattha. There is school, post office adjacent to the acquired land. There is pitch road near the land. PW 3 has stated that the value of the land acquired was about Rs. 15,000-20,000 per kattha. From the above evidences of the witnesses it appears that regarding the value of the acquired land there is no consistent evidence. One witness says the value to be Rs. 10,000-12,000/- per kattha whereas the other says Rs. 15,000-20,000/-. In such view of the matter, it is not safe to rely upon the oral evidence and the learned court below has rightly not relied upon these oral evidences.

10. O.P.W. 1 examined by the Appellant is Binay Kumar Teg who is Civil Engineer. He has stated that the acquired land is Bhit class-2 and not Bhit class-1 land and the roads and villages are at far distance from the acquired land. At paragraph 2 of his cross- examination he has stated that the road is one kilometer from the acquired land. There is no denial on the part of the claimants to this fact. Admittedly, the claimants'' case itself is that he was growing Potato, Telhan, Dalhan etc. in the land acquired. According to the OPW -1 villages are far away from the acquired land and the road is one kilometer away. From perusal of the sale deeds Ext. 1/B, 1/C and 1/D it appears that Dhirendra Prasad Singh had sold 25 decimal in each of the sale deeds to a registered society namely Bhagalpur Prefecture Association for the purposes of construction of a missionary

school out of plot No. 34. In the west of the said plot there is PWD road which is clear from Ext. 1/D. Therefore, it appears that the lands sold by these three sale deeds are homestead land and were sold for the purpose of construction of school. Therefore, the nature of the acquired land and the nature of the lands sold by these three sale deeds are not similar. The learned Counsel for the claimants submitted that the value of the lands of same villages is equal. So far this submission is concerned no such presumption is there and it depends upon the nature of the land. As stated above the lands sold by these three sale deeds appears to be homestead land and there is a PWD road just adjacent to the land sold. So far the lands acquired is concerned admittedly, as stated above the road is one kilometer away and according to OPW -1 the villages are also far away. The claim of the claimants is also that the land surrounded by many villages. Therefore, in my opinion the sale instances i.e. Ext.1/B, 1/C and 1/D are not comparable to the lands acquired. The other two sale deeds i.e. Ext. 1 and 1/A are of the year 1989 i.e. dated 1.9.1989 and 2 - 6/7 decimal only is involved in both the sale deeds. Therefore, those sale deeds are not relevant for determination of the value of the acquired land. Since there is no other evidence available on record regarding the market value of the acquired land it is desirable that the three sale deeds Ext.1/B, 1/C and 1/D may be taken as guideline for determination of the prevalent market value of the acquired land. As stated above the nature of the land is different. In the above three sale deeds the homestead land was sold for Rs. 48,000/-, 49,000/- and 48,000/-. If average is taken approximately it comes to Rs. 2000/- per decimal. Therefore, the value of the homestead land in the year 1987 was Rs. 2000 per decimal. The acquired land is Bhit class-II land and vegetables were grown. In my opinion, therefore, these sale deeds can be taken for guideline, it will indicate the market value of the acquired land because there is nocomparable sale instances. It is well settled principles of law that for finding out the prevalent market value some guess work is to be done. In the present case, we have seen oral as well as documentary evidences. Except these three sale deeds there is no other materials to rely upon and based it for determination of compensation. However, as I have stated that the above three sale deeds can be taken into as guideline in my opinion if 25% is deducted from the value of the lands acquired will be proper value. Now therefore, if 25% is deducted then it comes to Rs. 1500/- per decimal.

11. Now let us consider the other aspect of the matter. The claimants who has been examined as PW 1 stated that he was earning Rs. 20,000/- per year from the lands acquired. If 50% is deducted from the said amount then it comes to Rs. 10,000/- per year. According to the Hon''ble Apex Court in the case of State of Haryana Vs. Gurcharan Singh and another etc., for agricultural land 12 years multiplier shall be suitable multiplier vide in the last line of paragraph 3. Accordingly, if Rs. 10000/- is multiplied by 12 it will come to Rs. 1,20,000/- i.e. Rs. 1500/- per decimal. Now therefore, if it is calculated in any way either on the basis of sale deeds or on the basis of multiplier then also it comes to Rs. 1500/- per decimal. I therefore, find that this is the just and proper prevalent market

value of the lands acquired. The claimant-Respondent No. 1 is entitled to the compensation on this rate.

12. In view of my above discussion, the impugned judgment and award are liable to be modified to the extent that the prevalent market value of the lands acquired was Rs. 1500/- per decimal to which the claimants are entitled to receive along with other statutory benefits.

13. In the result this first appeal is allowed in part. The impugned judgment and award are modified to the extent indicated above.

14. In the facts and circumstances of the case, the parties shall bear their own costs.