

(2010) 08 PAT CK 0085
In the Patna High Court
Case No : First Appeal No. 338 of 1979

Kamla Pd. Singh (dead) through his L.R. Smt. Ram Sundari Devi and Others	APPELLANT
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The State of Bihar RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Citation : (2010) 08 PAT CK 0085

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—The original applicant Kamla Pd. Singh had filed this first appeal u/s 54 of the Land Acquisition Act against the judgment and decree dated 23.12.1978 passed by Sri Arun Chandra Das, learned 1st Subordinate Judge-cum-Land Acquisition Judge, Muzaffarpur in Land Acquisition Case No. 136 of 1966. During the pendency of the appeal Kamla Pd. Singh the sole applicant died and in his place the present appellants have been substituted.

2. It may be mentioned here that lands of one Jagarnath Prasad Singh and the lands of the deceased Kamla Pd. Singh was acquired by the State of Bihar for construction of Manikpur Branch Canal of Gandak Project in the year 1965-66 in Land Acquisition Case No. 24 P-Muzaffarpur of 1965-66. Two awards were prepared separately in the name of Jagannath Singh and Kamla Pd. Singh being award No. 4 and award No. 2. The Land Acquisition Officer awarded total sum of Rs. 19,278.31 paise for the land of Kamla Pd. Singh the original applicant. It may be mentioned that total area of 2.69 acres land of Kamla Pd. Singh was acquired. Likewise Jagarnath Singh was also awarded total amount of Rs. 7,057.27 paise for the orchard measuring 97 decimal. Being aggrieved by the award both of them filed applications before the Land Acquisition Officer and prayed for referring the matter u/s 18 of the Land Acquisition Act. The Land Acquisition Officer referred the case of both of them to the Land Acquisition Judge. Reference of Jagarnath Singh was numbered as Land Acquisition Case No. 135 of 1966 whereas the reference of Kamla Pd. Singh was numbered as Land

Acquisition Case No. 136 of 1966. Both the land acquisition cases were disposed of by the impugned common judgment and award. Against the said impugned judgment and award Jagarnath filed First Appeal No. 339 of 1979 before this Court. The said first appeal has been dismissed for default on 23.6.2003. The deceased Kamla Pd. Singh has filed this First Appeal No. 338 of 1979.

3. The Land Acquisition Judge examining the materials available on record awarded a sum of Rs. 32,775/- besides 6% interest to the appellants. Therefore, the Land Acquisition Judge enhanced the compensation from Rs. 19,278.31 paise to Rs. 32,775/- i.e. excess of amount of Rs. 13,496.69 paise was awarded.

4. The learned Counsel for the appellants submitted that the orchard of the appellants was acquired by the State of Bihar and in the land there were about 101 Mango trees and other trees such as Lichi, Sisam, Mahua etc. and the annual income was Rs. 10000/- from yielding of the fruits i.e. Mango and Rs. 2000/- from Lichi. The learned Counsel further submitted that Ext. 1-1/A, the sale deeds, were filed by the appellants to show the value of the land in question but the learned court below did not consider the said sale deeds saying that by the sale deeds the lands were transferred and in the present case value of orchard is to be calculated. According to the learned Counsel the Land Acquisition Judge should have calculated the value of land separately and should have also calculated the value of trees separately but instead of doing so only calculated the value of the income per year and multiplied it by 15 instead of 20 which is wrong. On these grounds learned Counsel submitted that the impugned judgment and award are liable to be set aside and the compensation be enhanced.

5. On the other hand the learned Counsel appearing on behalf of the State submitted that admittedly the lands which were sold through Ext. 1 - 1/A situated at far distance from the land acquired and the lands are not in close vicinity and therefore, the learned court below has rightly not relied upon and moreover, orchard of the appellants has been acquired as such the trees standing on the land and land cannot be valued separately and the learned court below has rightly not done so.

6. In view of the above contentions of the parties, the points arises for consideration are

(1) Whether the land and the trees i.e. orchard should have valued separately or not ?

(2) Whether the amount of compensation awarded by the court below is correct or not ?

7. Ext. 12 is the application u/s 9 of the Land Acquisition Act filed by the appellant wherein there is no mention that except orchard any other land has been acquired. The Khataiyan prepared by the Land Acquisition Department has been proved in the court below which shows that there were many kinds of trees

such as Sisam trees, Plaintain trees Mango trees, Mahua trees etc. in different plots which were acquired. In Ext.12 i.e. the application u/s 9 the appellants claimed 101 Mango trees, 20 Lichi trees, 21 Sisam trees etc. whereas the objection filed against the award the appellants-claimants had claimed 6 Biju Mango trees and 48 Kalmi Mango trees only. It may be mentioned here that it was the basis reference u/s 18 of the L.A. Act.

8. The claimants himself in his evidence admitted that the Mango trees were about 50 years old which were planted by his grand father and he was earning Rs. 10000/- per year from those orchard trees. Admittedly, the State has capitalized the income from the trees of the orchard and multiplied it by 10 and awarded the amount.

9. The learned Counsel for the appellants submitted that it should have been 20 times and moreover the yearly income was Rs. 10000/- and, therefore, the compensation should have been Rs. 2,00,000/-. The learned Counsel submitted that learned court below has wrongly relied upon Ext. 7/A, the auction of Mango fruits. According to the learned Counsel for the appellants it was government auction and, therefore, it should not have been relied upon.

10. From the perusal of the Ext.7-A it appears that the Mango fruits was auctioned by the Divisional Officer of the Gandak Project for Rs. 1900/- for one year. In my opinion only because it is auctioned by the Government, the document cannot be discarded. I therefore, do not agree with the learned Counsel for the appellants. The learned Counsel next submitted that the appellant has produced the Patta whereby the fruits were settled to the private persons. It may be mentioned here that the person who took statement were not examined by the claimants and therefore, in my opinion the learned court below has rightly not relied upon the Patta.

11. 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 decision. In State of Haryana Vs. Gurcharan Singh and another etc., 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 Section 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 firewood 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.

12. From the above decision, it is clear that all the submission of the learned Counsel for the appellants has been considered therein and in my opinion the decision of the Hon"ble Supreme Court is clear answer to the submissions of the learned Counsel for the appellant.

13. In the present case, as stated above after calculating the separate income from the yielding of the trees i.e. Rs. 1900/- it was multiplied by 10 by the Land Acquisition Officer, whereas it was multiplied by 15 by the Land Acquisition

Judge. I therefore, find no reason to interfere with the finding of the learned court below. The Hon''ble Supreme Court in the above decision held that the multiplier should not be more than 8 years but in the instant case the Land Acquisition Judge has multiplied by 15 times. Accordingly, I do not agree with the learned Counsel for the appellants that the Land Acquisition Judge should have multiplied by 20 times.

14. In view of my above discussion, I find no reason to interfere with the impugned judgment and award passed by the Land Acquisition Judge. Accordingly the findings of the learned court below are hereby confirmed.

15. In the result this first appeal is dismissed. In the facts and circumstances of the case, there shall be no orders as to costs.