
(1998) 06 GAU CK 0029
In the Gauhati High Court
Case No : First Appeal No. 112 of 1994

L.A. Collector

APPELLANT

Vs

Radha Mohan Debnath

RESPONDENT

Date of Decision : 26-06-1998

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 23, 24, 4

Citation : (1998) 4 GLT 413

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : R.B. Sinha, for the Appellant; P.K. Dhar, for the Respondent

Final Decision : Allowed

Judgement

P.C Phukan, J.—This appeal u/s 24 of the Land Acquisition Act, 1894 (herein called the Act") is directed against the judgment and decree dated 8.6.1994 passed by the learned Land Acquisition (L.A.) Judge, North Tripura at Kailashahar in Misc. (L.A.) Case No. 1 of 1992.

2. I have heard Mr. R.B. Sinha, the learned Counsel appearing for the Appellant Land Acquisition (L.A.) Collector and Mr. P.K. Dhar, the learned Counsel for the Respondent-claimant.

3. The facts leading to this appeal may be stated briefly as follows. The L.A. Collector issued a notification dated 2.8.86 u/s 4 of the Act for acquisition of land measuring 1" 49 acres covered by C.S. Plot Nos. 791, 792, 798, 799 and 810 to 812 under Khatian Nos. 270 and 271 of Kaulikhura Mouja in Kailasahar belonging to the claimant for construction of an embankment of Manu river, a public purpose. This notification u/s 4 of the Act was published in the Tripura Gazette on 23.8.86. Thereafter the declaration dated 24.1.1987 u/s 6 of the Act was published in the said Gazette on 4.2.1987.

4. The L.A. Collector found that out of the aforesaid total area of r49 awes, only 0" 31 acres viti land, 0"11 acres pukur par, 0"90 acres nal land and 0"17 acres

pukur and assessed the valuation of viti land, pukur par and pukur at the rate of Rs. 10,000/- per kani, and nal land at the rate of Rs. 7,000/- per kani and awarded all admissible allowances including 12% solatium per annum for 19 months from 23.8.86 vide assessment note Ext. H dated 26.3.1988.

5. The claimant drew the amount awarded as aforesaid under protest and wrote to the LA. Collector on 24.6.1988 that he claimed compensation at the rate of Rs. 40,000/- per kani and requested to make a reference to the Land Acquisition (LA) Judge u/s 18 of the Act The reference was made accordingly.

6. In his petition dated 10.5.93 before the L.A Judge, the claimant claimed compensation at the rate of Rs 1 lakh per kani. He examined no other witness except himself (R.W.1). According to him, the acquired land comprised of nal land and garden and is situated near the offices of District Magistrate (D.M) and Superintendent of Police (S.P), police reserve and poultry market; water supply connection reached up to a place 200 cubits away from the acquired land where there were electric facilities and roads. He exhibited certified copies of two sale deeds Ext. 1 dated 23.3.98 and Ext.2 dated 15.3.89 stating that these sale deed lands were only 250 cubits away from the acquired land. He also exhibited certified copies of the reference Ext 3 dated 3.3.92 in Misc. (LA) Case No. 6/92, and the decree Ext. 4 passed by the LA. Judge in the said case. He awarded compensation at the rate of Rs. 30,000/- per kani. EW.1 deposed that the land in the said case and the land in the instant case were covered by the same notification, were of the same nature and quality, and were adjacent lands.

7. In his objection dated 3.8.93 filed in the Court of LA. Judge, the LA Collector has said that only 0.31 acres of acquired land was viti, that the Government establishments are away from the acquired land, that no modern facilities were available then at the time of acquisition and such facilities became available only after construction of offices of the D.M., S.P. etc. and that the fact that the land was acquired for construction of an embankment shows that the land is nearer to water flow/river having less potential value, that the sale deeds produced by the claimant are not trustworthy and these sale deed lands were situated away from the acquired land and had no similarity with the potential value of the acquired land and that the lands in the L.A. case referred to by the claimant's are situated at a very important place by the side of Kailasahar Kumarghat road & away from the claimant's land acquired in the instant case.

8. An Amin was examined as D.W. I. He claimed to have visited the claimant's land acquired in the instant case before and after the notification of acquisition. According to him, the acquired land comprised of nal, doba, tank and chara that there was no Government office near the acquired land, that the offices of D.M. and S.P. are 1.5/2 miles away and police reserve is 1 mile away from the acquired land, that the lands of the deeds Exts. 1 and 2 exhibited by the claimant are 2.5 / 3 k.m away from the acquired land and that an appeal was being filed against the decree passed the L.A. Judge in LA. Case No. 6/92 referred to by the claimant D.W. 1 exhibited 7 sale deeds, viz., Ext A dated

26.4.85, Ext B dated 6.11.85, Ext. C dated 5.2.86, Ext. D dated 12.2.86, Ext E dated 17.1.86, Ext F dated 23.11.87 and Ext G dated 14.12.87 showing the sale of lands of these deeds at prices ranging from Rs. 4,000/- to Rs. 14,000/- per kani. D.W. 1 has deposed that the claim land was acquired in the instant case to construct an embankment on the bank of the river to protect the lands lying on the northern side of the river and the lands of the sale deeds Ext. A to G also lie on the northern side of the river and are close to the acquired land in the instant case. The D.W. 1 also exhibited the L.A. Collector's assessment note Ext. H dated 6.3.1988.

9. In para 9 of the instant judgment the learned LA Judge said, "it is not despite that land covered by the judgment (copy of decree marked Ext. 4) is near the land of the claimant." This is not correct. The L.A. Collector in his objection filed before the L.A. Judge did dispute this by categorically saying that the lands in the L.A. Case (No. 6/92 and decree Ext. 4) referred to by the claimant were situated far away from the claimant's land acquired in the instant case. Be that as it may, taking note of the D.W.'s statement that an appeal was being filed against the decree Ext. 4, learned LA. Judge thought it fit not to assess the market value of the claimant's land acquired in the instant case on the basis of the said decree Ext. 4. In para 9 learned L.A. Judge further held "that the land (covered by decree Ext.4) and the acquired land (in the instant case) may be covered by the same notification, but there may be a gulf of difference between their location and their respective potential value." Having regard to the submission and evidence adduced in behalf of the L.A. Collector, learned L.A. Judge categorically held, "obviously the market price of Ext. 1 and 2 (exhibited by the claimant) cannot be equated with the acquired land (in the instant case). The claimant has not produced any evidence of any other transaction of land nearby his land in the recent past in or around the time of acquisition". u/s 23 of the Act, compensation which is payable to the claimant is the market value of land at the date of publication of the notification u/s 4. In the instant case such notification was published in the Tripura Gazette on 23.8.1986. But the only sale deeds Ext. 1 dated 23.3.89 and Ext.2 dated 15.3.89 produced by the claimant were executed after lapse of more than 2 1/2 years of the said notification. It has been held in AIR 1996 Guj 16 that the sale deed executed after 2 years of the notification acquiring the land in question cannot be relied on. In State of Orissa Vs. Rajendra Panda and Others, also it has been held that where the transaction under the sale deeds produced by the claimant was not made within reasonable proximity of the time of the date of notification u/s 4, the said sale deeds are not safe guide for determination of the market value of the land.

10. The learned L.A. Judge was of the view that the sale deeds Exts. 1 and 2 and decree Ext. 4 are of little assistance to the claimant (examined no other witness except himself and no other document except Exts. 1, 2 and 4 in support of his claim), and yet the learned L.A. Judge jumped into the conclusion that the claimant should "be given compensation at the rate of Rs. 20,000/- (Rupees twenty thousand) per kani", and thereby doubled the compensation amount.

Learned L.A. Judge recorded no reason therefore except stating that "the claimant has been deprived of his land for ever". This is absolutely no ground for doubling the compensation, for in each and every land acquisition case the owner is deprived of his land for ever. The finding of the learned L.A. Judge as to the market price of the acquired land at the rate of Rs. 20,000/- per kani was, therefore, not based upon evidence and legitimate deduction, there from and hence cannot be sustained.

11. An appeal u/s 54 of the Act being in continuation of the proceedings in reference u/s 18 of the Act, the consideration relevant at the stage of deciding the reference holds good, also the matter comes up for a decision in appeal. At the time of the hearing and appeal u/s 54 of the Act, the State can rely upon any transaction which was not considered by the L.A. Collector at the time of enquiry u/s 11 of the Act. For and on behalf of the L.A Collector, D.W. I exhibited 7 sale deeds Exts A to O dated 26.4.85, 6.11.85, 5.2.86, 12.2.86, 17.1.86, 23.11.87 and 14.12.87 respectively. The notification u/s 4 of the Act was published on 23.8.1986. Hence, the transactions under the aforesaid 7 sale deeds were made within a reasonable proximity of time of the aforesaid notification, 5 of such transactions being made shortly before the notification. D.W. 1 claimed to have visited the acquired land before and after the acquisition notification and said that the aforesaid sale deed lands are closest to the acquired land. He can be reasonably expected to have knowledge about these lands in course of his professional works as an Amin. Nothing has been elicited in his cross-examination to discredit his evidence and I find no reason to disbelieve his sworn testimony. D.W. 1 also exhibited L.A. Collector's assessment note Ext. H dated 26.3.86 wherein it has been stated, inter-alia, that the acquired land on the river side of the existing bundh was on threat of flood water and hence nobody would purchase such land for construction of home-stead. Sale deeds Exts. A to G had shown sale of lands nearby acquired land at price ranging from Rs. 4,000/- to Rs. 14,000/-per kani. It has been held in (1968) 2 SCJ 869 that where sale deeds pertaining to different bon-afide transaction are relied on behalf of the Government, that representing the highest value should be preferred to the rest unless there are strong circumstances justifying different course such as taking an average of the sale deeds. In the instant case no such circumstances exists. I, therefore, direct that the Appellant-claimant be given compensation at the rate of Rs. 14,000/- (Rupees fourteen thousand) per kani.

12. In the result, it is ordered that the Respondent-claimant be awarded compensation for his acquired land at the rate of Rs. 14,000/-(Rupees fourteen thousand) per kani. The impugned judgment and decree " dated 8.6.1994 passed by the learned LA. Judge stands modified to that extent. The rest of the impugned judgment and order is left undisturbed.

13. The First Appeal is accordingly allowed to the extent indicated above. No costs.

14. Send down immediately the lower Court's records with a copy of this

judgment and order.