

(2003) 01 OHC CK 0008

In the Orissa High Court

Case No : First Appeal No's. 340, 341, 345 and 346 of 1994

L.A. Zone Officer, Talcher-Sambalpur Rail Link, Angul

APPELLANT

Vs

Rabindranath Panda and Another and Kamal Lochan Panda
and Others

RESPONDENT

Date of Decision : 31-01-2003

Acts Referred:

Citation : (2003) 01 OHC CK 0008

Hon'ble Judges : P.K. Tripathy, J

Bench : Single Bench

Advocate : Addl. Standing, for the Appellant; Brajamohan Patnaik, for the Respondent

Judgement

P.K. Tripathy, J.—L.A. Misc. Case No. 58 of 1993 (F.A. No. 340 of 1994), L.A. Misc. Case No. 54 of 1993 (F.A. No 341 of 1994), L.A. Misc. Case No. 57 of 1993 (F.A No. 345 of 1994) and L.A. Misc. Case No. 56 of 1993 (F.A. No. 346 of 1994) were heard analogously as per the evidence recorded in L.A. Misc. Case No. 54 of 1993 and also disposed of by a common judgment by learned Civil Judge (Sr. Division), Angul as per the impugned award dated 11th April, 1994. At the time of hearing the aforesaid four appeals also common argument was advanced by learned Counsel appearing for the Appellant and Respondents. Therefore, all the aforesaid four appeals are disposed of by this common judgment.

2. The following tabular chart indicates about the land acquired in each of the aforesaid case and the valuation assessed by the Appellant.

Case No.	Area acquired	Rate	Compensation awarded
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(1)	(2)	(3)	(4)
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LAMC 54 of 93	Ac.0.01	Rs. 10,000/-	Rs. 133.20 p.
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LAMC 56 of 93	Ac.0.99	-	Rs. 15,400.23
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LAMC 57 of 93 Ac.0.95 -

LAMC 58 of 93 Ac.0.82 - Rs. 11,933.09

The aforesaid landed properties have been recorded in the Record-of-right as either as Sarad II or Sarad III variety of land. Respondents have claimed improvement of that land. Respondents in each of the cases advanced the plea of higher valuation and they claimed at the rate of Rs. 1,400/- per decimal i.e. at the rate of Rs. 1,40,000/-per acre. That land was acquired for Talcher-Sambalpur Rail Link as per the declaration dt. 4.2.1986 and Gazette Notification dated 24.3.1986. There is no dispute on record that village Sankerjang belongs to rural belt and the acquired land was cultivable land by the date of the notification.

3. In course of inquiry, Rabindranath Panda (one of the Respondents) was examined as solitary witness from the side of the claimants whereas no evidence was adduced from the side of the Appellant. The Respondents also relied on the certified copy of the record-of-right and a copy of the district statistical hand book of 1991 relating to Dhenkanal district and such documents have been marked as Exts. 1 to 5. On assessment of evidence and assessing the net yield from the acquired land and applying the 16 multiplier, learned Civil Judge (Sr. Division) assessed the value of the land at Rs. 48,000/- per acre, but he awarded at the rate of Rs. 40,000/- per acre. Learned Civil Judge (Sr. Division) also directed for compensation for remaining part of plot Nos. 854 and 895 on the ground that after the aforesaid acquisition the remaining portion of such plots have been rendered useless. It may be noted that out of Ac. 0.30 decimals in plot No. 854 only Ac. 0.11 decimals was acquired and similarly out of Ac. 0.12 decimals from plot No. 895 Ac. 0.07 decimals was acquired. Thereafter, he made the calculation of the compensation in each of the cases and passed the award accordingly.

4. Learned Counsel for the Appellant argued that the evidence adduced by the Respondents is next to nothing so as to claim for an enhanced rate of compensation and therefore the impugned award be set aside and the compensation determined by the Appellant be restored. In that context, he argued that the provision of law in Sections 23 & 24 of the Act, were completely lost sight of by the Court below while making determination of the compensation. Learned Counsel for the Respondents though advanced argument supporting argument supporting to the impugned award, but he was unable to justify the same with reference to any evidence on record. However, he argued that if this Court shall find that the determination of valuation at Rs. 40,000/- per acre made on the higher side, then a reasonable sum be fixed.

5. On due consideration of the aforesaid contention and the evidence available on record, this Court finds that both the parties are to be equally blamed for their inaction for not bringing proper evidence on record. Neither party has desired to adduce additional or further evidence and under such circumstance, this Court finds no necessity of making an order of remand of the proceeding. On an

assessment of the evidence on record, this Court finds that undoubtedly the acquired land was all cultivable land. In the Record-of-right though they have been recorded as Sarad II & III variety of land, but because of lapse of time and continuous improvement made by the claimants it will not be unreasonable to hold that those land had acquired a better category i.e. Sarad I variety. The yields calculated and confronted is on higher side. In that respect, in course of argument a deliberation made with learned Counsel goes to show that a sum of Rs. 28,000/- per acre will be a reasonable sum towards compensation with respect to the acquired land. So far as the land which has been said to be rendered uncultivable there is no convincing evidence on record and, therefore, that part of the award is liable to be set aside.

6. Accordingly, the impugned award is modified by awarding the compensation at the rate of Rs. 28,000/- per acre for the entire acquired land. Respondents shall be entitled to all statutory benefits as provided in the act including the solatium, interest, additional compensation etc. and the Appellant is not bound to make acquisition of the rest portion of the above noted two places nor he is bound to make payment of compensation for such land. The amount of compensation in each of the cases be accordingly calculated by the Court below within a period of two months. In that respect, the Appellant shall not only produce the calculation sheet from its side within that period but also shall make provision for payment of the compensation amount within a period of four months from today and failing that Appellant shall be liable for payment of penal interest at the maximum of the admissible rate from the date default of payment of the awarded amount.

7. Accordingly, all the four appeals are allowed in part. Parties are directed to bear their own cost of litigation. Hearing fee is assessed at contested scale.