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**(2003) 01 OHC CK 0009**  
**In the Orissa High Court**  
**Case No : First Appeal No. 43 of 1981**

Lakhiram Agarwala

APPELLANT

Vs

Land Acquisition Officer and Others

RESPONDENT

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**Date of Decision :** 31-01-2003

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 96

**Citation :** (2003) 01 OHC CK 0009

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

**Bench :** Single Bench

**Advocate :** Sanjeet Mohanty, for the Appellant; Addl. Standing Counsel, for the Respondent

**Final Decision :** Allowed

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## Judgement

P.K. Tripathy, J.—This appeal has been preferred by one of the claimants as against the award passed by learned Subordinate Judge, Bargarh in L.A. Misc. Case No. 94 of 1976 as per the impugned award dated 30.8.1980.

2. An area of Ac. 1.76 decimals belonging to the Appellant and Respondent Nos. 2 to 7 was acquired by the Government under declaration dated 18.6.1966 and Gazettee Notification No. 22.6.1966 for the purpose of construction of B.G. Railway line for the IDC Cement Project at Bargarh. The acquired land situates in village of Bramchari under Bargarh Police-station. A total sum of Rs. 663.87 paise was assessed as compensation. The Appellant and Respondent Nos. 2 to 7 as the objectors raised protest to such low compensation and claimed compensation at the rate of Rs. 300/- per decimal on the ground that, that land was purchased by them for industrial purpose and that locality being used as the industrial belt and the acquired land had the potency of homestead land.

3. In course of inquiry three witnesses were examined on behalf of the claimants and the Appellant was examined as P.W.3. The other two witnesses were two independent witnesses to speak about the then existing market price of the

acquired land. In that respect, the claimants proved two registered sale deeds i.e. registered sale deed dated 5.3.1996 (Ext.1) and registered sale deed dated 13.4.1967 (Ext.2) to suggest that the market price in the locality was Rs. 300/- per decimal i.e. Rs. 30,000/- per acre. No evidence was adduced from the side of the Respondent No. 1 i.e. Land Acquisition Officer, Sambalpur.

4. In the impugned award learned Subordinate Judge, Bargarh has recorded that the evidence adduced by the claimants relating to the compensation at the rate of Rs. 30,000/- per acre is not believable. He has also recorded the finding that the evidence relating to existence of a structure and well by the date of acquisition was not correct. Accordingly, he did not accept the evidence from the side of the claimants. At the same time, he found the above noted awarded amount to be too low and, therefore, he assessed the market rate at Rs. 2, 000/- per acre and passed the award for payment of compensation along with the admissible solatium and rate of interest which was prevalent at that time. The Appellant as one of the claimants has challenged the aforesaid award and the co-claimants have been added as proforma Respondents. The contesting Respondent is Respondent No. 1 i.e. the Land Acquisition Officer. Except Respondent No. 1 the other Respondents have not appeared to contest the appeal and obviously so.

5. The contention of the Appellant is that location and situation of the acquired land adjoin to Bargarh township and at a short distance from the National Highway and that being a fact admitted on record and apart from that the potency of the acquired land as a piece of homestead land having not been disputed, therefore, learned Subordinate Judge should not have discarded the evidence from the side of the claimants when no rebuttal evidence was forthcoming from the side of the State. Accordingly, the Appellant prays to grant compensation at a higher rate than what has been awarded by learned Subordinate Judge. Learned Counsel for the Respondent No. 1, on the other hand, states that the enhancement which has been made by the Court below is on the basis of surmises whereas the assessment of valuation made by the Respondent was based on sale statistics and under such circumstance the aforesaid prayer of the Appellant may not be entertained.

6. On perusal of the impugned award and the evidence on record, this Court finds that learned Subordinate Judge was unduly harsh to the claimants for rejecting their evidence in toto. Undoubtedly there is some exaggeration in that evidence, but eliminating the exaggerated part if the remaining unchallenged evidence shall be considered, then undoubtedly the claimants are entitled to a higher compensation than what was assessed by Respondent No. 1 or what has been awarded by the Court below.

7. By the date of acquisition Bargarh as a sub-division under the erstwhile Sambalpur District was an important town having much of business activities. The evidence on record adduced by the claimants is not disputed by Respondent No. 1 that the locality from which the case land was acquired is a locality

adjoining to Bargarh Municipal limit. The evidence of the Appellant and the other two witnesses that there was a Punjabi hotel nearer to the acquired land has not been disputed by Respondent No. 1. When the land of P.W.1 adjoins to the National Highway the acquired land was beyond Ac. 8.00 from that spot. When the land Ext. 1 was sold at the rate of Rs. 300/- per decimal so also in Ext.2, therefore, because of that distance factor notwithstanding having the potency of homestead land the value of the acquired land could not have been lesser than the 1/3rd of the value of land covered under Exts. 1 & 2. This aspect was not at all visualised by the Court below while assessing the evidence on record. When Respondent No. 1 does not dispute to the location from which the land was acquired, potency as the homestead land and nearer to the National Highway the Court below should have viewed the evidence in a rational manner.

8. As per the aforesaid discussion even if the value of the acquired land shall be rated at 1/3rd of the rate at which the land in Exts. 1 and 2 was sold in a contemporary period then it also appears that the valuation per acre could not have been less than Rs. 10,000/- i.e. Rs. 100/- per decimal. This Court could have gone for a better valuation if the claimants could have produced the documents i.e. the sale deed under which they purchased the acquired land so as to make a comparative value and the rising trend of the price of the land in that locality. Since that was not done by the claimants either in the Court below or even they did not adduce evidence in the Court as a piece of additional evidence therefore, after making assessment of the evidence in the aforesaid manner the compensation is determined at the rate of Rs. 10,000/- per acre. The claimants shall be entitled to all statutory benefits which are admissible to them as per the provision of law which is applicable to their case. In that respect, the Court below shall make proper calculation.

9. The appeal is accordingly allowed by setting aside the impugned award and enhancing the rate. Parties are directed to bear their respective cost of litigation. Hearing fee is assessed at the contested scale.