

(1975) 01 OHC CK 0008

In the Orissa High Court

Case No : First Appeals No"s. 65 and 82 of 1968

Lalsahab Nabin Chandra Bhani Deo and Another

APPELLANT

Vs

The State of Orissa

RESPONDENT

Date of Decision : 06-01-1975

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 25(2), 28, 34

Citation : AIR 1975 Ori 126 : (1975) 41 CLT 816

Hon'ble Judges : S.K. Ray, J

Bench : Single Bench

Advocate : R.C. Patnaik, S.C. Adhikari and P.K. Misra, for the Appellant; A.G. and Standing Counsel, for the Respondent

Judgement

S.K. Ray, J.—Both these appeals arise out of the decision of the Sub-Judge, Baripada dated 27-1-1968 passed in a reference u/s 18 of the Land Acquisition Act (hereinafter referred to as the "Act").

2. The appellants in First Appeal No. 65 of 1968 are the respondents in the connected First Appeal No. 82 of 1968 and were owners of the lands comprising of 77 decimals out of plot No. 1731A and plot No, 1732A in khata No. 2/621 situated in Ward No. II of Baripada Municipality, Preliminary notification u/s 4(1) of the Act was published in the Orissa Gazette on 25-8-1966 declaring that the aforesaid lands were needed for the public purpose of construction of Head Post Office building at Baripada. Possession of the lands was taken on 1-11-1965 and thereafter the Land Acquisition Officer made the award on 16-3-1967 granting a sum of Rs. 41,830.35 towards compensation of the land at the rate of Rs. 54,335 per acre. At the instance of the claimants the Land Acquisition Officer referred the matter to the Court u/s 18 of the Act for determination of the amount of compensation payable to the claimants. The reference was registered as Misc. Judicial Case No. 44 of 1967 in the Court of the Sub-Judge. Baripada. The learned Sub-Judge granted compensation as follows:--

(a) Rs. 55,815/- towards the value of the land at the rate of Rs. 2,000/- per

gunth.

(b) Rs. 8,372.25 as statutory compensation.

The aggregate amount of compensation determined by the Court was Rs. 64,187.25.

3. The claimants had omitted to make any claim before the Land Acquisition Officer, but claimed compensation of Rs. 1,85,000/-, plus 15 per cent solatium before the Court. The Sub-Judge, as stated above, enhanced the compensation by Rs. 12,000/- and odd but did not grant any interest. Being dissatisfied with the inadequate enhancement of the compensation the claimants have filed First Appeal No. 65 of 1968. The Land Acquisition Officer, on the other hand, being aggrieved by the enhancement, has preferred First Appeal No. 82 of 1968. Therefore both these appeals have been heard together and will be governed by this judgment.

4. Mr. Patra, the learned Standing Counsel, for the Land Acquisition Officer has raised the following points:--

(1) The claimants having failed to file their claims for compensation in pursuance of the notice u/s 9 of the Act, the Sub-Judge had no jurisdiction to award a higher sum than the amount awarded by the Land Acquisition Officer in view of Section 25(2) of the Act.

(2) The learned Sub-Judge having rejected the sale deeds filed on behalf of the claimants from consideration, and having accepted the valuation of the Ext. A as the correct valuation, should not have enhanced the compensation, but should have awarded the same on the basis of Ext. A itself.

The learned counsel for the claimants appellants contended:--

(1) Since notice issued u/s 9(3) of the Act did not give 15 clear days notice as required by Sub-section (2) of Section 9 of the Act it was invalid, and consequently the penal provisions of Section 25 of the Act cannot be invoked and the claimants cannot be debarred from making a claim before the Court in a reference u/s 18 of the Act for a sum higher than the amount awarded by the Land Acquisition Officer.

(2) The sale deed, Ext. A should not have formed the sole basis of determination of compensation by the Sub-Judge inasmuch as the claimants led evidence to show that the land was, for the reasons disclosed in the evidence, sold for a price less than the market price.

(3) Interest should have been granted both under Sections 28 and 34 of the Act.

5. I will now proceed to deal with the first contention of Mr. Patra. Though it has been held by this Court in the case of Collector of Cuttack Vs. Mayadhar Sahu, that the provisions of Section 9(3) of the Act as to notices are only directory and non-compliance or imperfect compliance with them will not make the proceeding

of the collector invalid or render the award ultimately passed u/s 11 a void one, nevertheless, for the purpose of Section 25 of the Act, which is a penal provision, the provisions of Section 9 of the Act in the matter of giving notice should be fully complied with.

Sub-section (1) of Section 9 of the Act directs the collector to cause public notice to be given at convenient places on or near the land to be taken stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him. That notice shall further state the particulars of the land so needed and shall require all persons interested in the land to appear personally, or by agent, before the collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interest. Sub-section (3) of that section also directs the collector to serve notice to the same effect on the occupier of the land. The expression "to the same effect" occurring in Sub-section (3) means that fifteen clear days must elapse between service of the notice and the date and time on which the notice is required to appear and make his claim. In this case the claimants were known to have interest in the land. Notice u/s 9(3) of the Act was served on the claimants on 15-11-1966 and they were required to appear on 18-11-1966 and to make their claim to the amount of compensation for the lands acquired. They, therefore, did not get 15 clear days notice to make their claim. Sub-section (2) of Section 25 of the Act provides that when the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall, in no case exceed the amount awarded by the Collector. But if, in the opinion of the Judge, there is sufficient reason for such omission, then he may award an amount in excess of the amount awarded by the Collector towards compensation.

Undisputedly the notice u/s 9(3) of the Act served on the claimants is defective. When they appeared before the Collector the latter also did not apprise them of the penal consequences arising out of their refusal or omission to make a claim as to amount of compensation. The Sub-Judge also appears to have treated the absence of a proper notice u/s 9(3) of the Act as a sufficient cause explaining the failure or omission on the part of the claimants to make their claim for compensation before the Collector. On a perusal of the decisions cited on behalf of the claimants. I am of opinion that the better judicial view is that the bar of Section 25(2) does not apply to cases in which proper notice u/s 9(3) has not been served upon the claimants.

In the case of Tara Prasad Chaliha Vs. Secy. of State and Another, notice served on the claimants did not give them clear fifteen days notice. It was held that such notice is not valid in law and, accordingly, it would be absolutely wrong to prevent the claimants from asking for proper compensation on a reference made

by the Collector to the Court u/s 18 of the Act. In such a case it is not possible to apply the penal provisions of Section 25 against the claimants.

In the case of N.M. Venkatarama Iyer Vs. Collector of Tanjore, , only nine days notice was given to the claimants u/s 9(3) of the Act. It was there held that omission to give fifteen days clear notice as required u/s 9(3) of the Act constitutes sufficient cause within the meaning of Section 25(3) of the Act. The claimants were, therefore, not debarred from asking for higher compensation than the amount awarded by the collector before the Court.

Similarly, in the case of District Labour Officer, Amalapuram v. Veerashanta Venkatasubrahmanya Sastri, AIR 1931 Mad 50 it was held that there being no clear fifteen days notice, the claimant was not precluded from putting forward his claim for higher compensation before the Court.

In the case of V.S. Subramania Chettiar and Another Vs. State of Madras, it was held that Section 25 of the Act being a penal provision must be applied only in cases where there is clear and convincing proof of a deliberate refusal or an omission or a failure, without justifiable reason, to make such a claim after having been made aware of the consequence of such a refusal or omission.

To the same effect is the case of State of Bihar Vs. Anant Singh and Others, . It was held there that Section 25(1) of the Act can be resorted to only if it is proved to the satisfaction of the Court that the claimants had omitted or refused to make any claim to compensation after service of valid notice u/s 9(3) of the Act.

In the case of Piroia Cawasji v. Special Land Acquisition Officer it was held that bar u/s 25(2) of the Act does not apply to cases in which proper notice u/s 9(3) has not been served on the claimants.

From the aforesaid decisions it is apparent that the overwhelming judicial opinion is that unless proper notice u/s 9(3) is served on the claimants they cannot be debarred u/s 25(2) of the Act to make a claim for higher compensation before the Court on the ground that they had omitted to make such a claim before the Collector. That apart, absence of giving fifteen clear days notice to the claimants has been accepted as sufficient reason by the Sub-Judge for the claimants omitting to make their claim before the Land Acquisition Officer pursuant to the notice u/s 9(3) of the Act which merely gave three days notice in place of fifteen days notice statutorily required. For the aforesaid reasons, the first contention of Mr. Patra must be negated.

6. The second contention of Mr. Patra as also of the claimants will be taken up together as they relate to the merits of the claim. It will be seen that the claimants had filed four sale deeds. Ext. 1 is the sale deed dated 25-4-1964 by which 2 gunths. 14 biswas and 8 sandas of land with houses and latrines thereon was sold for Rs. 10,000/-. Ext. 2 is another sale deed dated 2-9-1964 under which 11 biswas and 12 sandas of land with two houses of brick walls was sold for Rs. 3,500/-. Ext. 3 is the sale deed dated 19-10-1966 under which 2 gunths,

8 biswas and 12 gandas of land was sold for Rs. 6,500/- and Ext. 4 is the sale deed dated 4-9-1964 under which 7 biswas and 4 gandas of land, with brick wall and tin roofed houses standing thereon was sold for Rs. 6,800/-. Three of these sale deeds are prior to the date of notification u/s 4 of the Act and Ext. 3 is a sale deed which is two months subsequent to the date of the said notification. Exts. 1, 2 and 4 show that the lands with houses standing thereon were sold, and no evidence has been adduced on behalf of the claimants regarding the separate valuation of these constructions. It was, therefore, difficult for the Sub-Judge to deduce the rate of market value of the land alone from these sale-deeds. There was, therefore, good reason for the Sub-Judge in not acting upon these three sale deeds. Exts. 1, 2 and 4 alone as a guide for determination of the market value of the acquired lands. But Ext. 3 is a sale deed nearest in point of time to the date of notification u/s 4 of the Act. The land, sold under Ext. 3 is also situated within the limits of Baripada Municipality. This sale deed, at any rate, gives some indication of the market value near about the time of acquisition which works out to about Rs. 2,500/- per gunth though it is a settled principle that prices of the small slices of land cannot be the basis for valuation of larger areas. The Sub-Judge has relied upon Ext. A which is of the year 1964 in which the claimants sold their land at Rs. 1,500/- per gunth. It is seen from this document that it is about two years prior to the date of acquisition and cannot be the sole basis of valuation. The acquired lands are situated in a very important locality of the town. As appears from the evidence, the street in front of the acquired lands is called Kutcherv Road which means that the land is near the area where Courts are situated. Recently in the past a cinema house has been set UP in the locality of the acquired land. Therefore, in estimating the market value of the land on the date of Section 4 notification, with reference to Exts. 1, 2 and 4 of earlier years, 25 per cent of the average market value deducible from these sale deeds has to be added to that average towards potential value so as to reach the market value at the time of notification u/s 4 of the Act. This method of determination of market value has been adopted in two cases of this Court, viz., *Mst. Khuduna Bibi v. State of Orissa* (1968) 34 Cut LT 1043 and *Kasinath Mukherji Vs. Collector of Puri*, ". Adopting this principle the market value of the site of the land which will be deducible from Exts 1, 2 and 4 by adding 25 per cent towards potential value will be Rs. 7,908 per gunth (Rupees 6,333/- plus Rs. 1,575/-). But since it includes the value of construction, it will be fair to assess the market value, of the site only at the average rate of Rupees 3,000/- per gunth. The rate of market value from Ext. 3 is Rs. 2,500/- per gunth and from Ext. A it is Rs. 1,500/- per gunth but it being a sale transaction prior to Section 4 notification 25 per cent is to be added to it and the rate thus comes to Rs. 1,875/-. The claimants have given an explanation for the low valuation given in Ext. A. It appears from the testimony of P. Ws. 1 and 2 that since the vendors were accepted as partners in setting and running a cinema hall for which the vendee was purchasing the land, it was sold for a nominal price. These witnesses were not cross-examined on this point. I accept the explanation as explaining the low valuation in Ext. A and the Sub-Judge was not right in accepting Ext. A as

the basis for his valuation. So taking everything into account, as aforesaid, the market value per gunth of the acquired land should be determined at the rate of Rs. 2,500/- per gunth.

Therefore, at that rate, the price of the acquired land of 77 decimals (equivalent to 28 gunths short of 1 biswa and 8 gandas, calculated at the rate of 1 acre being equal to 11/2 mans or 37 eunths approximately prevalent in Baripada) will be (Rs. 70,000/- minus Rs. 233/-) Rupees 69,767/-.

That apart, it appears from Ext. B that by this acquisition the remaining land of the claimants has been truncated into two separate small areas, one a triangular strip of 7 gunths which has lost its exit to the east and north, and the second, a triangular piece of 3 gunths having no point of contact with the first block which has lost all utility for the claimants and is a dead loss to them. The claimants are also entitled to some amount on account of this severance. Considering the various sale deeds and deprivation or diminution of the facility of access to the public roads and practically rendering 3 gunths useless to the claimants, I assess compensation at Rs. 5,000/- on this account.

Thus, the total compensation Payable is as follows:--

(1) Market value Rs. 69,767/- (2) Damage on account of severance. Rs. 5,000/-
(3) 15% statutory compensation. Rs. 11,216.25 _____

Total Rs. 85,983.25

7. The last point is whether the claimants are entitled to interest. The sum awarded by the Collector was paid to the claimants on 4-5-1967 though possession was taken on 1-11-1966 and there after no further amount has been paid even though the award was enhanced by the Sub-Judge. The claimants will, there fore, be entitled to interest at the rate of six per cent per annum on the total amount adjudged in this appeal from 11-11-1966 till 3-5-1967 and thereafter interest at the same rate of six per cent per annum on the excess amount over the award of the Collector from 4-5-1967 till the date of Payment. This interest is payable both under Sections 28 and 34 of the Act.

In the result. F. A. 65/68 is allowed with costs and F. A. 82/68 is dismissed with costs.