

(2005) 02 OHC CK 0061
In the Orissa High Court
Case No : First Appeal No. 21 of 1995

Land Acquisition and Resettlement Officer, U.K.H.E., Project	APPELLANT
Vs	
Kaibalya Rout and Others	RESPONDENT

Date of Decision : 07-02-2005

Acts Referred:

Land Acquisition Act, 1894 — Section 17(4), 18, 23, 24, 4(1)

Citation : (2005) 02 OHC CK 0061

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : Addl. Standing, for the Appellant; S.D. Das, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—This First Appeal has been filed by the Land Acquisition and Resettlement Officer, U.K.H.E. Project, Koraput u/s 54 of the Land Acquisition Act, hereinafter referred to as "the Act" assailing the award passed by the Civil Judge (SD), Jeypore vide order dated 7.12.1994 in MJC No. 9 of 1993.

2. By notification issued on 28.5.1978 under Sections 4(1) and 17(4) of the Act which was published in the Extraordinary Gazette No. 838 dated 27.6.1978, Ac.4.53 cents of land appertaining to Khata Nos. 143, 193-Ka and 194-Ka of village Jeypore, vide Sheet No. 5 was acquired for construction of Jeypore Main Canal. The Land Acquisition Officer after conducting a local enquiry awarded compensation for the acquired land. The land owner Brundaban Rout having died, his son/L.R., Kaibalya Rout, received the compensation on protest and filed objection which was referred to the Court below for adjudication inconsonance with Section 18 of the Act. According to the land owner-claimant the acquired land was situated in town area and within the limits of Jeypore Municipality. As such he claimed that he was entitled to compensation for his land at the prevalent market value, i.e. at the rate of Rs. 12.00 per sq. yard.

3. In order to substantiate his claim, Kaibalya Rout, the L. R. and son of the

original claimant-land owner Brundaban Rout got himself examined as P.W.1 and exhibited five documents. The opposite party got examined one witness as O.P.W.1 who exhibited four documents in support of the stand that adequate compensation had been paid to the claimant.

4. The Court below after discussing the evidence, both oral and documentary, and relying upon an earlier judgment of this Court dated 22.2.1990 in F.A. No. 93/83/83 (T.V. Subha Rao and Ors. v. The State) with regard to compensation paid earlier for lands acquired for the same purpose as in the present case, and situated near-about the land acquired in the present case, fixed the market value of the acquired land at the following rates:

Dry II land - Rs.20,000.00 per acre

Paddy III land - Rs.22,000.00 per acre

Paddy II land - Rs.20,000.00 per acre

While awarding compensation for the acquired land, the Court below also directed for payment of all other emoluments as payable under the provisions of the Act.

5. The award of the Court below is assailed mainly on the ground that the same is contrary to law, against the weight of evidence on record and that the Court below has failed to appreciate the scope and ambit of Sections 23 and 24 of the Act, and the geographical situation of the lands acquired in F.A. No. 93 of 1983 (supra). The further ground on which the impugned award is assailed is that the claimant having not produced any sale deed in support of his claim for compensation and the land in question having no potential value, the amount of compensation awarded by the Court below is excessive.

6. In order to appreciate the submission made, this Court being the final Court of facts, itself scrutinized the evidence, both oral and documentary. P.W.1 was the land owner-claimant. In his evidence he has clearly stated that the lands which were the subject-matter of F.A. No. 93/83 were in close vicinity of the land acquired in the present case, inasmuch as the lands in both the cases situated only one hundred metres apart. He has stated that an I.B. of S.E. (R and B.), a Petrol-Pump and a Rice-Mill were situated at about two hundred yards from the land acquired in the present case. Similarly, Gandhi Chhak was at a distance of one hundred metres and so also N.H. No. 43. He further stated that the land in question was situated within the Municipal limits. Though P.W.1 was cross-examined at length, nothing much could be elicited to discredit his evidence.

O.P.W.1 who was an Amin in the Land Acquisition Office in his evidence admitted that Gandhi Chhak was approximately at a distance of 1 k.m. from the acquired land. Though he has stated that the acquired land had been surrounded by paddy fields, in his cross-examination he candidly admitted that he had joined the Land Acquisition Office at Koraput in 1984 and he had not prepared any report with regard to topography. In para-12 of his cross-examination he

admitted that he had no personal knowledge regarding any sale transaction and he had not seen the lands covered under any sale transaction. In para-9 he admitted that the acquired land was situated within Ghasi Sahi, Bapuji Nagar.

The claimant relied upon Ext.1 series, Ext.2, Ext.3, Ext.4 and Ext.5 series. The certified copy of the judgment in F.A. No. 93/83 (supra) was exhibited as Ext.4. Ext.2 was a certified copy of the order passed in MJC No. 131/87 where Ac.0.68 cents of Dry II lands appertaining to Khata No. 194-Ka of the same Mouza had been acquired and for that compensation had been awarded at the rate of Rs. 20,000.00 per acre. Ext.3 reveals that a claimant had also been paid compensation at the rate of Rs. 20,000.00 per acre for Dry II land situated in the same Mouza. Ext.4 is the certified copy of the judgment of a Division Bench of this Court in F.A. No. 93 of 1983 wherein this Court had held that the claimants in the said case were entitled to compensation at the rate of Rs. 25,000.00 per acre of Paddy I and Paddy II lands. The said lands were also situated in the same Mouza as in the present case.

7. Law as laid down by this Court in the decision reported in 1989 (I) OLR 408 (LAO v. Ratha Sahu) is that previous awards are to be accepted as best pieces of evidence to determine the market value. I find that the claimant in the present case had discharged his onus of proving the market value of the acquired land by adducing cogent evidence both oral and documentary. A cumulative assessment of the oral evidence vis-a-vis documentary evidence adduced in the case and specially the earlier judgment of this Court in F.A. No. 93/83 (supra) reveals that the compensation awarded by the Court below is just and proper. Admittedly the acquired land is situated in the same Mouza, being in the near-bout vicinity and had been acquired for the same purpose. This Court had awarded compensation at the rate of Rs. 25,000.00 per acre, vide Ext.4. But then the lands in that case were acquired in the year 1979 while in the present case the acquisition was in the year 1977. Taking into consideration the said fact, the Court below has rightly awarded compensation for the acquired land calculating the same at different rates for different varieties of land comprising the entire land acquired, i.e. Rs. 20,000.00 per acre of Dry II land, Rs. 22,000.00 per acre of Paddy III and Rs. 25,000.00 per acre of Paddy II land.

8. I do not find any infirmity or illegality in the impugned award and I have no hesitation to confirm the same. The First Appeal is accordingly dismissed. Parties to bear their respective costs.