
(2008) 02 OHC CK 0023
In the Orissa High Court

Land Acquisition Collector

APPELLANT

Vs

Madanlal Agrawal

RESPONDENT

Date of Decision : 13-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34
Land Acquisition Act, 1894 — Section 18, 23

Citation : (2008) 106 CLT 179 : (2008) 1 OLR 922

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Judgement

Sanju Panda, J.—This First Appeal is directed against the judgment dated 19.8.1995 passed by the learned Civil Judge (Senior Division), Bhawanipatna in MJC No. 118 of 1982 in a reference u/s 18 of the Land Acquisition Act (hereinafter referred to as to "the Act").

2. Land Acquisition Collector is the appellant. The land appertaining to plot Nos. 2288 (Ac.40 decimals) and 2289 (Ac.60 decimals) was acquired in village Jaipatna in the district of Kalahandi for Upper Indravati Multipurpose Project. The total area of the land acquired by the Government was Ac.1.00 dec. and the Government constructed a road on the said land. The grievance of the claimant-Madanlal Agarwal is that he was owner in possession of Ac.4.72 decimals of land under Khata No. 255/243 where he was running a brick factory named and styled as M/s. Arya Bricks Factory. He had invested a huge amount of money in the said brick kiln, chimney and also for foundation of the office and residence at the site.

3. The Land Acquisition Collector determined the compensation at Rs. 2584.00 ps. only towards market value of one acre of land which was acquired. The claimant being aggrieved by the said award, filed his objection which was referred u/s 18 of the Act.

4. Claimant in his objection asserted that owing to construction of road on the acquired land, his remaining lands became useless and the brick factory was

damaged and this fact had to be taken into consideration while determining the market value of the acquired land. The learned Civil Judge (Senior Division) earlier considering the entire facts had passed an award on 19.12.1984 directing the Special Land Acquisition Collector to pay compensation for the entire land measuring an area of Ac.4.72 decimals at the rate of Rs. 2500/-per acre.

5. Further, it was held that the claimant is entitled to Rs. 38,000/-for the damage accrued on the factory and chimney and Rs. 1000/- for the office and house. The Land Acquisition Collector preferred an appeal against the said award before this Court and this Court vide order dated 31.1.1995 passed in First Appeal No. 87 of 1985 remanded the matter to the referral Court for fresh adjudication and directed that opportunity shall be given to the parties to adduce further evidence on the limited question, i.e., whether the remaining lands of the claimant have been injuriously affected because of the severance. In pursuance of the said direction, claimant adduced further evidence by examining himself along with two other witnesses. On the other hand, Land Acquisition Officer examined Zone Officer, Land Acquisition Upper Indravati Project as P.W.1. Claimant in his evidence stated that the authority constructed the road by digging earth from the remaining part of his land and by that process the level of the land became low and it submerged in the river water and for the said reason, his remaining land measuring Ac.3.72 decimals has become totally useless. The said evidence is corroborated by two other witnesses examined on behalf of the claimant and in cross-examination, nothing substantial has been brought out from their mouth to discredit their Version. Learned Civil Judge (Senior Division) after considering the evidence held that P.W.3's evidence inspired no confidence of the Court and further held that admittedly one acre of land of the claimant has been acquired by the Land Acquisition Collector for Upper Indravati Multi-purpose Project for construction of the road and it was not disputed that the land was running in the middle path of the claimant's land measuring Ac,4.72 decimals as a result of which the remaining lands have been split up in two parts and the, claimant is entitled to compensation as per 3rd clause of Section 23(1) of the Land Acquisition Act, 1894. He has determined the market value of the acquired land upon proof of severance of land from a large area and the value of remaining lands got deprecated and a prospective buyer will pay less amount for the remaining area. He has also taken into consideration the report submitted by an Advocate Commissioner who was deputed to the case land to ascertain whether any damage was caused to the land of the claimant on account of construction of road on the acquired land.

6. The said Commissioner after local enquiry submitted his report in Court which was admitted without any objection and the said report shows that due to acquisition the entire land of Ac.4.72 decimals was divided, into two, parts and some portion of the land has been submerged in the river water and huge quantity of earth has been removed from the land of the claimant for construction of the road and the value of the claimant's land stood adversely affected on account of the above facts. Considering the above facts, the Court

below came ,to a finding that remaining land of the claimant was affected by acquisition and claimant is entitled to damage for the land and it determined that for the rest of Ac.3.72 decimals of land, claimant is entitled to get Rs. 70007-"as compensation for severance of the acquired land from his other lands. Considering the value of the land at the relevant time, he determined Rs. 25007- for acquired land and compensation of Rs. 39,000/- for damage to his brick factory chimini and plinth and he directed that claimant is entitled to interest at the rate of 9% on the above amount of Rs. 7000/- from the date of taking possession of the acquired land till the said amount is paid or deposited and on default he directed that the claimant is entitled to 1\$% per annum, from the date of expiry of the said period and one year on the above amount of compensation till the said amount is paid or deposited.

7. Learned Addl. Standing Counsel vehemently argued that - the learned Court below should not have accepted the case of the claimant in toto and directed to pay compensation for the rest of the lands which were not acquired by the Land Acquisition Collector.

8. On perusal of the oral and documentary evidence available on record it is found that the quantum of compensation awarded for the land was in tune with the evidence. The Advocate Commissioner has filed a report after spot verification. However, the Land Acquisition Officer did not make any objection to the report of the Advocate Commissioner which was accepted by the learned Court below vide order dated 26.10.1984. They also did not adduce any rebuttal evidence to discredit the evidence adduced by the claimant that rest of the land became useless due to acquisition and construction of the road and disputing the fact that earth was not taken away from the rest part of the land for construction of Upper Indravati Multipurpose Project. Since the appellant has failed to adduce any evidence to discredit the claim of the claimant, the Court below has accepted that the rest of the lands have become useless as those were low level area from the road and some portion of the lands are submerged in the river due to digging of the earth from the land and the same is not suitable for any purpose either agriculture or house site.

9. Hence, claimant is entitled to damage for the entire land. Since Government has acquired one acre of land for construction of the road and rest portion of the property has not been acquired by the Government for any purpose but those property was injuriously affected because of the acquisition the claimant is entitled to damage. The finding of the learned Civil Judge is confirmed in respect of land. The learned Civil Judge has granted 9% interest without assigning any reason.

10. This Court determines the rate of interest at 6% per annum as per Section 34 of the Civil Procedure Code. The claimant is entitled to 6% interest per annum on the said amount from the date of possession or till the amount is paid or deposited. The claimant is also entitled to other salutatory benefits granted by the learned Civil Judge.

With the above modification, the "First Appeal is allowed in part.
There shall be no order as to costs.