

(1983) 08 OHC CK 0016
In the Orissa High Court
Case No : First Appeal No. 135 of 1973

Land Acquisition Officer

APPELLANT

Vs

Satyabadi Sahu (and after him) Dileswar Sahu and Others

RESPONDENT

Date of Decision : 05-08-1983

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Citation : AIR 1984 Ori 51

Hon'ble Judges : P.K. Mohanti, Acting C.J.; G.B. Patnaik, J

Bench : Division Bench

Advocate : A.G, for the Appellant; M. Misra, J.P. Misra, S.S. Basu and S.C. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—Land Acquisition Officer, Sambalpur, is the appellant against the order of the Subordinate Judge. Bargarh, in Land Acquisition Misc. Case No. 110 of 1972 in a reference u/s 18 of the Land Acquisition Act (hereinafter referred to as the "Act).

2. 147.84 acres of land in Khunti Nos. 1, 2 and 14 of village Sauntamal had been acquired by a notification dated 13-1-1966 issued u/s 4(1) of the Act. Out of this acquisition, 11.68 acres in Kunti No. 1 and 28.56 acres in Khunti No. 2--in all 40.24 acres belonged to the respondent. The Land Acquisition Officer fixed the compensation at Rs. 32.125.86 out of which Rs. 30,285.86 was compensation for the land and Rs. 1.840/- was the compensation for the trees of the land. The original claimant-respondent having claimed higher compensation, the matter was referred to the Subordinate Judge u/s 18 of the Act. The Subordinate Judge upheld the compensation determined for the trees, but so far as the compensation for land is concerned, it was enhanced to Rs. 67,000/-. In addition, fifteen per cent solatium and interest at the rate of six per cent per annum from the date of delivery of possession till making of payment were also granted. Hence the present appeal.

3. Before the Subordinate Judge, on behalf of the claimant-respondent, two witnesses were examined and three documents were exhibited. The Land Acquisition Officer did not adduce any evidence. Out of the witnesses examined on behalf of the claimant-respondent, P. W. 1 is the son of the claimant who deposed that they were getting about fifty maunds of paddy per acre from Bahal land, twelve maunds of paddy per acre from Mal land, forty maunds of paddy per acre from Berna land and eight maunds of paddy per acre from Atta land. He further deposed that the total income of the acquired land would be Rs. 80,000/- per annum. In cross-examination, however, he stated that though he has documents showing the annual income from the land those documents, were not produced. He also deposed that the lands in question were purchased by his father under various sale deeds. No person was ascribed as to why the sale deeds were not produced. P. W. 2 claimed to be a neighbouring land-owner and corroborated the evidence of P. W. 1 with regard to the yield of the land and further asserted that the acquired land was fertile and fed by Kata and canal Exts. 1 and 2 are copies of Hamid Settlement Parcha of village Sauntamal and Ext. 3 is an order dated 8-9-1971 of the Subordinate Judge. Bargarh, in another land acquisition case. The learned Subordinate Judge did not rely on the evidence of P. W. 1 for fixing the market value of the land on the ground that there being no corroboration. it would not be safe to rely on the self-serving statement of P. W. 1 for the claim in question. He further observed that no revenue records or documents were filed to prove the yield of the land. But relying on Exts. 1, 2 and 3 and adopting the method of capitalisation of the net yield of the land, the learned Subordinate Judge fixed the compensation of the land as already stated above.

4. Mr. Rath, the learned Advocate-General, appearing on behalf of the appellant raised the following contentions ;--

(i) The alternative mode of determination of market value by capitalising the annual income of the land can be taken recourse to only when there is no evidence to arrive at the market value of the acquired land on the basis of contemporaneous sale deeds. P. W. 1 having admitted that the lands were purchased by his father under various sale deeds and not having produced those sale deeds, it must be held that the best evidence was withheld and, therefore, the court should not have taken, recourse to the alternative mode of determining the market value.

(ii) The claimant had failed to prove the annual yield of the land inasmuch as the oral evidence of P. W. 2 has been rejected by the learned Subordinate Judge. Besides, though P. W. 1 admitted in cross-examination that he had documents showing the annual income from the land, no documents were produced and proved in the case and, therefore, for withholding the evidence adverse inference should have been drawn.

(iii) Exts. 1 and 2, the certified copies of Pareha of the village in question, do not indicate the yield of the land and, therefore, the learned Subordinate Judge

committed gross error is determining the market value of the acquired land with reference to Exts. 1 and 2.

5. Mr. Misra, the learned counsel appearing on behalf of the respondents, on the other hand, submitted that the learned Subordinate Judge illegally rejected the evidence of P. Ws. 1 and 2 particularly in view of the fact that their evidence-in-chief has not been shaken in any manner in the cross-examination and, therefore, this Court should accept the evidence of P. Ws. 1 and 2 for arriving at a conclusion as to the annual yield of the land. He also contended that the learned Subordinate Judge rightly fixed the compensation with reference to Exts. 2 and 3 from which the quality of the land is determined and then getting the annual yield of the land with reference to Harold's Settlement Report. 1926. In this connection reliance was placed on the decision of this Court in *State of Orissa Vs. Bharat Chandra Nayak*, . Relying on the decision of the Supreme Court in the case of *Thakur Kamta Prasad Singh (Dead) by Lrs. Vs. The State of Bihar*, , Mr. Misra further contended that there would be always an element of guess-work inherent in most cases involving determination of market value of the acquired land and, therefore, the conclusion of the learned subordinate Judge Could not be held to be illegal.

6. u/s 23 of the Land Acquisition Act. in determining the amount of compensation to be awarded for land acquired, the Court must find out the market value of the land on the date of publication of the notification u/s 4(1) of the Act. The term "Market value" has been defined through judicial pronouncements to mean, the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing condition, with all its existing advantages and its potential possibilities when laid out in its most advantageous manner, excluding any advantage due to the carrying out of the scheme for the purposes for which the property is compulsorily acquired. Though the question of determination of compensation cannot be made by any mathematical formula, yet certain methods of valuation have been recognised in course of time through various judicial decisions. They are--(i) the price paid within a reasonable time for the land in question; (ii) the rents and profits of the land received shortly before the acquisition; (iii) price paid for adjacent lands possessing similar advantages; and (iv) opinion of any valuer or expert. Where, however, it is not possible to determine the market value with respect to contemporaneous sale deeds. the annual income which the owner was obtaining from the land has to be found out and then capitalised by number of years" purchase so as to arrive "at market value. In the case of *State of Gujarat etc. Vs. Vakhtsinghji Sursinghji Vaghela and Others etc.*, Bachawat. J., speaking for the Court held :--

".....The market value is the amount which the land if sold in the open market by a willing seller might be expected to realise. In the case of land the market value is generally ascertained on a consideration of the prices obtained by sale of adjacent lands with similar advantages. Where there are no sales of comparable lands, the value must be found in some other way. One method is to take the

annual income which the owner is expected to obtain from the land and to capitalise it by a number of years" purchase. The capitalised value is then taken as the market value which a willing vendor might reasonably expect to obtain from a willing buyer"

7. This mode of determination of market value with reference to the annual net yield of the land has been recognised in the earliest case of *Secretary of State v. Bodh Bam*. AIR 1931 Pat 131 and has been followed in *State of Orissa Vs. Bharat Chandra Nayak*, . In *Bharat Chandra's* case, the Court rejected the oral evidence with regard to the yield, but on the basis of *Hamid's Settlement* report of 1926 determined the annual gross produce and taking that as guide fixed the market value of the acquired land.

8. The learned Subordinate Judge in the present case has accepted the same principle. P. Ws. 1 and 2 though had given an approximate yield of the land, yet the same has not been accepted and in our view rightly since P. W. 1 admitted in cross-examination that he had documents showing the annual income of the land and those documents were not produced. It would, therefore, not be proper for us to accept the evidence of P. w.s. 1 and 2 with regard to the annual yield of the land, as has been contended by Mr. Misra. learned counsel for the respondents.

9. We also do not find any force in the contention of the learned Advocate General that non-production of sale deeds by P. W. 1 with respect to the acquired land should be a ground for drawing adverse inference and the alternative mode of determination of market value by capitalising the annual yield should not be adopted, inasmuch as there is no evidence as to when the purchase of the acquired land was made. In the absence of any evidence on record regarding contemporaneous sale, the Court will have no other option than to proceed to determine the compensation on the basis of annual net yield. It is to be noted that State also did not adduce any evidence--oral or documentary--to prove any contemporaneous sale.

10. Mr. Rath's contention that the Subordinate Judge committed an error in fixing the market value with reference to Exts. 1 and 2 since they do not give any idea about the yield of the land is also without any force. From Exts. 1 and 2 the quality of the land is to be found out namely whether the land is Banal. Bernal, Mal or Atta. In *Hamid's Settlement Report* of 1926 the cultivable land in the district of Sam-balpur has been divided into thirty classes and in para 24 of the said Report at p. 21, the estimate of the gross yield of each variety of land is given. The subordinate Judge has taken that into consideration along with Exts. 2 and 3 for determining the yield and ultimately the market value of the acquired land. In fact, this Court in *Bharat Chandra's* case AIR 1955 Ori 971 (supra) has adopted the very same principle.

11. In the case of *Gangaram Dansana v. State of Orissa* (F. A. no. 147 of 1971 disposed of on 27th. Aug. 1979). 8.84 acres of land had been acquired for purposes of Hira Cement Factory at Bargarh. No evidence had been led on behalf

of the State. The Subordinate Judge rejected the claimant's contention regarding determination of market value on the principles indicated in Bharat Chandra's case. On appeal, this Court set aside the order of the Subordinate Judge and held that on the basis of the settlement records, yield of the land could be found out and on the basis of the average yield capitalisation could be made for determining the valuation. In view of the authoritative pronouncements, as aforesaid, it cannot be held that the Subordinate Judge committed any error in adopting the principle of capitalisation by finding out the annual yield of the land with reference to the revenue records.

12. In view of what we have stated above, the appeal fails and is accordingly dismissed with costs.

P.K. Mohanti, Actg. C.J.

13. I agree.