
(2007) 07 OHC CK 0002
In the Orissa High Court
Case No : First Appeal No. 273 of 1993

Land Acquisition Officer	Vs	APPELLANT
Tankadhar Padhan and Others		RESPONDENT

Date of Decision : 05-07-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23(1A), 23(2), 28, 4(1)

Citation : (2007) 2 OLR 437 Supp

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Advocate : Sangram Das, Addl. Standing, for the Appellant; N.C. Pati, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Parichha, J.—This is an appeal by the State against an award passed by the learned Subordinate Judge, Bargarh in L.A. Misc. Case No. 68 of 1980.

2. Ac. 10.16 decimals of land situated in village Ruhunia belonging to the claimant-Respondents was acquired by the State Government for the purpose of construction of Co-operative Sugar Mill by notification u/s 4(1) of the Land Acquisition Act (in short, "the Act") published in Orissa Extraordinary Gazette No. 2528 dated 19.1.1970. The Land Acquisition Collector awarded compensation of Rs. 28,991.50 paise for the land and Rs. 437/- for the trees standing thereon. Not being satisfied with the quantum of compensation the claimant-Respondents prayed for reference of the matter to the Civil Court for adjudication of the market value and the quantum of compensation for the land and trees. Accordingly, the matter came up before the learned Civil Judge (S.D.), Bargarh. After recording the evidence of the parties, learned referral Court awarded a compensation of Rs. 92,887.50 paise for the land including the value of the trees, 15% additional compensation for compulsory acquisition and 10% potential value. Learned Court also awarded 6% interest on the differential amount. The State preferred appeal against that award in First Appeal No. 352 of

1982. In that appeal, the award was modified and direction was given to the referral Court to determine the market value of the acquired land adopting the following rates: Rs. 4000/- per acre for Atta land; Rs. 6000/- per acre for Mal land; Rs. 7000/- per acre for Berna land and passed the award accordingly. Pursuant to this direction, the parties filed calculation sheet and learned referral Court accepted the calculation sheet filed by the claimants and ruled that the claimants are entitled to get Rs. 2,98,262.40 paise. The said order dated 2.9.1993 is under challenge in this appeal.

3. Mr. Sangram Das, learned Counsel appearing for the State challenges the impugned award basically on the ground that the inclusion of 10% potential value of the land and 12% additional market value for compulsory acquisition noted in the calculation sheet of the claimants was not in accordance with the statutory provisions and therefore, the said amount should not have been awarded. According to him, since the award passed by the Land Acquisition Collector was on 10.7.1973 and the award passed by the referral Court was on 15.5.1982 respectively, the claimants were not entitled to the benefits contemplated u/s 23(1A) of the Act.

4. Mr. Pati, learned Counsel for the Respondent-claimants on the other hand argues that 10% potential value and 12% additional compensation had been awarded by the referral Court and the said award was never set aside by the appellate Court in F.A. No. 352 of 1982 and, therefore, there was no legal bar for including those benefits in the compensation. In the case of Arjun Sethi Vs. L.A. Collector, Cuttack and Others, this Court following the ratio laid down by the apex Court in the cases Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., ; K.S. Paripoornan Vs. State of Kerala and Others, , State of Punjab Vs. Avtar Singh and Others, and State of Punjab and others Vs. Mohinder Singh Randhawa and another, formulated the following guidelines:

(i) If the award of the Collector is before 30.4.1982, the claimant is entitled to all the benefits of the amended Act;

(ii) If the award of the Collector is before 30.4.1982, but the award of the Civil Court in reference u/s 18 of the Act is after 30.4.1982, the claimant is entitled to the benefits u/s 23(2) and Section 28, as amended by the Amending Act, but is not entitled to the benefit u/s 23(1-A) of the Act;

(iii) If the award of the Collector as well as that of the Civil Court u/s 18 of the Act is prior to 30.4.1982, the claimant is not entitled to the benefits of the amended Act in the appeals against such awards; and

(iv) If there is specific direction by the Civil Court in reference u/s 18, or in appeal regarding payment of any benefits under the amended Act and such direction had not been reversed or modified by any competent appellate forum, the executing Court is bound to give effect to such direction notwithstanding the fact that the claimant was not entitled to such benefits.

5. No doubt in the present case the award of the Collector was before 30th April, 1982 and the award of the Civil Court was after that date, yet in view of the overriding provision noted in norm (iv) above, the benefit provided u/s 23(1-A) of the Act would be available to the claimants as there was specific direction of the Civil Court to pay 10% of the potential value and 12% additional compensation on the market value of the land and such direction was not reversed or modified by the appellate Court. So, the learned referral Court did not commit any legal error in awarding the above noted benefits to the claimants in the impugned award.

6. Accordingly, the impugned award is confirmed and the appeal is dismissed on contest, but in the peculiar circumstances without any cost.