

(2024) 04 OHC CK 0214
In the Orissa High Court
Case No : LAA No.54 Of 2006

Land Acquisition Officer Ganjam, Chhatrapur

APPELLANT

Vs

State Of Orissa

RESPONDENT

Date of Decision : 23-04-2024

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 11, 23, 18, 24

Citation : (2024) 04 OHC CK 0214

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

Bench : Single Bench

Advocate : B. Panigrahi, Amitav Tripathy

Final Decision : Dismissed

Judgement

S.K. Mishra, J.

1. This Appeal has been preferred by the State-Appellant challenging the order / award dated 04.05.2005 passed by the Civil Judge (Senior Division), Chhatrapur in M.J.C. No.73 of 1996, vide which the Court below assessed the compensation amount payable to the claimants/objectors @ Rs.2,00,000/- per acre along with solacium and further interest in terms of the Land Acquisition Act, 1894, shortly here in after "the Act, 1894".

2. The brief facts, which led to filing of this Appeal, are that an area of Ac.0.583 decimals of Bilo Do Fasali-II (Wet-II) kism of land appertaining to Sl. Nos.1427, 1429 and 1430 under Khata Nos.610/809 and 325 situated in village Burupada under Hinjili P.S in the district of Ganjam belonging to the Respondent No.1 (dead) was acquired by the State under section 4(1) of the Act, 1894 vide Notification dated 31.01.1994. A declaration dated 20.09.1994 for construction of approach road to Ghodahada river was made for which an enquiry was conducted under section 11 of the Act, 1894.

After taking into consideration the relevant materials like the contemporaneous sale statistics of the acquired land and its vicinity, compensation payable for the

acquired land was determined @ Rs.50,000/- per acre for Bilo Do Fasali-II kism of land and in total, the Respondent No.1 (dead) received Rs.40,179.00 towards compensation under protest. Thereafter, in a reference under section 18 of the Act, 1894, which was registered as M.J.C. No.73 of 1996, the referral Court vide order / award dated 04.05.2005, allegedly considering un-contemporaneous materials and future potentiality of the acquired land, enhanced compensation amount to Rs.2,00,000/-per acre along with other statutory benefits under the Act, 1894. Hence, this Appeal.

3. The Appeal has been preferred basically on the ground that the Court below ought to have examined the validity of the award determined by the Land Acquisition Officer (L.A.O.) within the parameter and mandatory guidelines stipulated under sections 23 and 24 of the Act, 1894, and has clearly acted in excess of its jurisdiction. The Court below neither has assigned any reason nor the circumstances under which it preferred to differ with the assessment of the market value determined by the L.A.O. In terms of section 23 of the Act, 1894, the market value of the acquired land on the date of publication of notification under section 4(1) of the Act, 1894, has to be taken into consideration. However, the referral Court committed an error in brushing aside the contemporaneous materials available on record vide Ext. A. The reference has not been judiciously determined and the manner in which the referral Court proceeded in enhancing exorbitantly the market value of the acquired land @ Rs.2,00,000/- per acre on the basis of untrustworthy statements of interested witnesses and on consideration of future potentiality of the acquired land is against the evidence on record.

Reiterating the grounds agitated in the Appeal, Mr. Panigrahi, learned A.S.C. for the State-Appellant submitted that the impugned award dated 04.05.2005 is liable to be set aside.

4. In response to the submission made by the learned A.S.C. for the State-Appellant, Mr. Tripathy, learned Counsel for the private Respondents, drawing attention to the findings of the Court below so also evidence on record, submitted that there is no infirmity or illegality in the impugned award.

Mr. Tripathy further submitted that on the basis of evidence on record, the Court below gave a finding that the land of the Respondent No.1 (dead) was acquired partially. The eastern side land, with an existing tube well, has not been acquired. Apart from the same, the Court below observed that there exists a cold storage to the north of the said junction. Apart from that, the houses of village Nua-Burupada, being on both side of the road, many big shops and rice mills are situated about one kilometer distance from the said place and the sale statistics being called for, both officially so also through staff, no such official letter was furnished to the Court below.

Mr. Tripathy submitted that, apart from the evidence on record, relying on the judgment of this Court reported in 1989 II OLR page 17 (Land Acquisition Officer,

Puri vs. The Executive Officer and others) so also judgment reported in 2005(I) CLR page 10 (Land Acquisition Collector, Cuttack vs. Smt. Harapriya Kar), the Court below has rightly assessed the revised compensation payable to the Respondent No.1(dead) as per the market price @ Rs.2,00,000/- per acre in favour of the said Respondent with an observation that the acquired land is situated in a developed form, being nearer to the trade and business center. There being no infirmity or illegality in the impugned award, the present Appeal deserves to be dismissed.

5. As is revealed from the L.C.R., the present Respondent No.1 (dead), who was examined as P.W.1, stated in his examination-in-chief/Affidavit evidence that the lands acquired are situated on the bank of river "Ghodahada" and was capable of growing crops throughout the year being irrigated by a L.I. point situated over the adjacent land covered under Survey No.1428 and are also situated on the junction where a road leading to village Khandara and Chanduli adjoins with the N.H. 217 i.e. Kalinga Road, which runs from Berhampur towards Aska and connects the other districts of the State. It was also stated by the P.W. 1 in his examination-in-chief that just on the opposite side of the lands acquired, there stands a factory belonging to one Ramesh Chandra Sabat of Hinjilicut over Survey No.1320 in the name and style of "Prabhat Enterprisers". Hence, the lands of the Petitioner (present Respondent No.1) were suitable for the purpose of industrial establishment or in the alternative, to be used as house site. It was also stated by the P.W.1 that the lands acquired are in a close vicinity and are at a closure distance of about 200 yards from village Nua-Burupada situated by the side of Kalinga Road and the area in between is also covered by a cold storage and rice mill of one Banchanidhi Patra and was suitable to fetch higher market value than the value assessed by the Acquisitioning Authorities.

6. Similarly, the P.W.2, in his examination in-chief, reiterating the facts, as was deposed by P.W.1, proved certified copy of RSD dated 06.04.1985, which was marked as Ext. 6 without any objection. The said witness has stated that he got the lands nearer to the lands of the Petitioner (Respondent No.1) and used the said lands for house site. He further deposed that his father late Ramahari Nayak purchased the said lands under R.S.D. No.882/1985, dated 06.04.1985, at the rate of Rs.2,00,000/- per acre and the value of the lands of the Respondent No.1 (dead) would be much more than the valuation of his land in the year, 1994. The said evidence of P.W.2 remained unchallenged during his cross examination. Rather, P.W.2, during his cross-examination, reiterated the fact that about 10 feet from the acquired lands, to the west of the acquired land, pipe factory of one Ramesh Sabat of Hinjili is situated. During his cross examination, on being suggested, P.W.2 denied that there is no demarcation in between the land of the Respondent No.1 (dead) acquired by the State and his land. Rather, he has stated that his land has been converted to homestead and though four sides of the said land were agricultural lands, but since last two to three years, they have become homestead lands.

Apart from the same, P.W.1 in his examination-in-chief has stated that though there were no factories near the acquired land at the time of acquisition but a factory at a distance of 75 links near the acquired land is there, which is a cement pipe factory. By the time of acquisition of land, the same was of equal value and by now (as on date of examination of O.P.W.1 i.e. on 13.04.2005), the said land, after filling, has become a high land and of higher value. During his cross-examination, O.P.W.1 also admitted that National High way No.217 is adjacent to the west of the acquired land and Khandara Road is to the adjoining north, to the National Highway. He has also admitted in his cross-examination that houses of village New Burupada are on both side of the road there. Many big shops and rice mills are about one kilometer from the said place. O.P.W.1 has also admitted in his cross-examination that though sale statistics was called for, both officially and through their staff, no such official letter has been furnished in the Court.

7. Since a stand has been taken in the Appeal as to non-consideration of the sale statistics, which was marked as Ext. A, on perusal on the said sale statistics, it is ascertained that though the kism of land of the Respondent No.1 (dead), which was acquired by the State, was Bilo Do Fasali-II (Wet-II), there is no such kism apart from kism "Bilo" and "Padar" to make a comparison as to the kism of the land and the compensation to be paid in terms of sale statistics. Law is well settled that in absence of sale statistics, the Court is to consider the potentiality of the land as on the date of acquisition.

8. In view of the evidence on record so also the observation made by the Court below based on the unchallenged testimonies of P.W. 1 and P.W. 2, so also admission of OP.W.1, as detailed above, this Court is of the view that there is no infirmity or illegality in the impugned order passed in M.J.C. No.73 of 1996. Accordingly, the Appeal stands dismissed.

9. State-Appellant is directed to act in terms of the order dated 04.05.2005 passed in M.J.C. No.73 of 1996 within a period of eight weeks hence..

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