

(2017) 02 MP CK 0039

In the Madhya Pradesh High Court

Case No : First Appeal No.159 of 1999

Manendra Prasad (since dead) Through His LRs Smt. Rashmi Mishra

APPELLANT

Vs

The Land Acquisition Officer

RESPONDENT

Date of Decision : 02-02-2017

Acts Referred:

Code Of Civil Procedure, 1908 (Cpc) — Section 96
Land Acquisition Act, 1894 — Section 4(1), 18, 23, 28(A), 54

Citation : (2017) 3 MPLJ 429 : (2017) 1 JabLJ 440

Hon'ble Judges : Shri J.P. Gupta, J.

Bench : Single Bench

Advocate : Shri V. S. Choudhary, Advocate, for the Appellants; Shri Amod Gupta, Panel Lawyer, for the Respondent/State No. 1; None, for the Respondent Nos. 2 to 5

Final Decision : Disposed Off

Judgement

Shri J.P. Gupta, J.—This appeal under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure has been filed against the judgment dated 27.11.1998 passed by the 1st Additional District Judge, Satna (MP), in MJC No.102/1994, arising out of Reference Application filed under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") against the award dated 15.5.1992 passed by the Land Acquisition Officer, Satna, in Revenue Case No.5/91-92.

2. In brief, the relevant facts of the case are that, the agricultural lands bearing survey nos. 11/2 area 1.152 acre, 16 area 0.798 acre, 20 area 3.553 acre, 21 area 0.729 acre, 22 area 0.032 acre, 23 area 0.223 acre and 24 area 0.170 acre, total area 6.657 hectare, situated in village Rampur, Tahsil Rampur Baghelan, District Satna, were of the ownership of the appellant and the respondents no. 2 to 4 and which were acquired for the construction of Tons Hydel Project, Sirmour, District Rewa for the Madhya Pradesh Electricity Board by

the respondent no. 1. With regard to the acquisition of the aforesaid lands, a notification was published in official gazette dated 9.1.1992 under section 4(1) of the Land Acquisition Act. The land acquisition officer passed the award on 15.5.1992, whereby total value of the land was determined at Rs.3,03,025.64 and the value of the house situated on the acquired land was determined Rs.22,569.84 with other statutory benefits and thus, total compensation was determined Rs.4,36,656.09. The appellant no. 1 and the respondents no. 2 to 4 submitted an application under Section 18 of the Land Acquisition Act to the land acquisition officer which was referred to the District court, Satna, whereby they claimed that the market value of the land fixed by the land acquisition officer is very meager. It should be Rs.30000 to 40000/- per acre. They also claimed that the entire acquired land was irrigated and yearly two crops were taken. Further they claimed that on the acquired land, a house having 15 rooms was situated and one Kachcha house was also situated but no adequate compensation has been given. They also claimed that there were two well on the acquired land and on the land bearing survey no. 22, there was a medh. Apart from it, on the survey no. 20, there were 60 mangoes trees but the compensation has been given only for 27 trees which is also very low. Therefore, value of the house be determined Rs.3 lacs and value of the well be determined Rs.33000/- and value of the medh be determined Rs.15000/- and the value of the Kachcha house be determined Rs.28000/- and value of the tress be determined Rs.3 lacs. Thereafter, with other statutory benefits, award be passed.

3. On behalf of the respondents no. 1 and 5, it has been stated that as per the market rate, value of the acquired land has been determined and the value of the house is also correct and for other heads, the claimants are not entitled to any compensation. The land acquisition officer has determined the compensation in accordance with law. They further stated that at the time of receiving the compensation, no objection was made and the application for reference was not submitted within prescribed period. Hence, the application is time barred.

4. Learned lower court after considering the evidence and having heard learned counsel for the parties and on perusal of the record has held that the claimant has received the compensation without any protest. Hence, they are not entitled to claim for enhancement of the compensation. Accordingly, the application has been dismissed.

5. The appellant being one of the claimants has challenged the aforesaid finding of the learned lower court on the ground that the finding of the learned lower court is contrary to law. The finding that the amount was received without any protest is perverse and against the material available on record. The land acquisition officer in the letter of reference has already mentioned that the amount was received under protest and the appellant has also proved this fact by the statement of one of the claimant, Suryodai Prasad (PW-1) which remained unchallenged during cross examination. Hence, the finding of the learned lower court is not sustainable. The learned lower court has committed grave error in

not considering the evidence regarding re-determination of value of the land and the house and also not considering the claim of the appellant regarding well, Medh and trees. Hence, the impugned award be set-aside and the appropriate compensation be determined in taking into consideration principle of determination of market value in different heads as prescribed under Section 23 of the Land Acquisition Act and the compensation be enhanced to the tune of Rs.1,04,600/-.

6. On behalf of the respondent no. 1 it is submitted that the impugned judgment of award is correct and in accordance with law. Hence, the appeal be dismissed. The respondents no. 2 to 5 have remained absent, hence, against them, this appeal heard ex-parte.

7. Having considered the contentions advanced by learned counsel for the parties and on perusal of the record in this case following questions arise for disposal of this appeal :-

(i) Whether the appellant and the respondents no. 2 to 4 have received the compensation amount without protest, therefore, they have no right to challenge the award?

(ii) Whether the appellant's claim for enhancement of compensation to the tune of Rs.1,04,600/- is acceptable?

(iii) Relief and cost?

8. Question No.1 : On perusal of the record it is found that the finding of the learned lower court that the appellant and the respondents no. 2 to 4 accepted the compensation without any protest is totally perverse as for this finding, there is no iota of evidence on record. Suryodai Prasad (PW-1) has categorically stated in his statement that he received the amount under protest and the same was acknowledged by the land acquisition officer vide its letter dated 14.9.1993 whereby the matter was referred to the District court, Satna for adjudication. Similar fact has been mentioned in the statement attached with the aforesaid letter. No other evidence has been adduced by the respondent no. 1 to prove the fact that the compensation amount was received without any protest. Therefore, it cannot be held that the compensation amount was received without any protest. This court in the case of Executive Engineer v. Chain Singh and others, MPLJ 2017 (1) Page 120, after scanning the judgment of the Apex Court has held that the claimant submitted an application under Section 18 of the Act for reference is itself a circumstance which shows impliedly that the amount of compensation was received under protest and the person cannot be deprived of his right to get appropriate compensation determined of his property merely on hyper-technical ground as the person has not expressed his protest expressly in writing and if the protest is made orally it shall also be deemed to be legal protest.

9. In view of the aforesaid discussion, the finding of the learned lower court is

set-aside and it is held that the compensation received by the appellant and other claimants was under protest and they are entitled to challenge the award as a matter of right. The question no.1 is answered accordingly.

10. Question No.2 : The land acquisition officer has determined market value of the land on the basis of quality of the land recorded at the time of Bandobast; not on the basis of quality of the land on the date of acquisition which is apparently incorrect approach. Suryodai Prasad (PW-1) has categorically stated that all the acquired lands had similar qualities. They were irrigated lands and two crops were taken yearly. The said fact has been corroborated by the witness of the respondent no. 1 viz Halka Patwari, Ramnaresh Tripathi (DW-1). Entries made in Khasra Panchsala since 1984-1986 to 1991-1992, Exs. P/6 to P/9 also corroborate the aforesaid fact. The aforesaid evidence is reliable and nothing is available on record contrary to the aforesaid evidence. In the aforesaid circumstances, all the acquired lands are required to be evaluated uniformly without any discrimination. As per the award, value of higher quality irrigated land has been determined at Rs.67,120/- per hectare. Therefore, as per the norms of the land acquisition officer, the acquired lands are required to be evaluated at the rate of Rs.67,120/- per hectare.

11. On behalf of the appellant before the Reference Court, for the purpose of determination of market value of the land as per the prevalent rate of market, three sale deeds; Ex.P/1, P/2 and P/3 have been produced which are related to village Ramnagar, where acquired land is situated. Sale deeds Ex.P/1 and Ex.P/3 were executed on 19.8.1992, in which market value of the land is Rs.1 lakh per hectare and by the sale deed dated 12.7.1991 (Ex.P/2) 0.101 hectare land was sold for Rs.8000/-. Accordingly, the land was sold at the rate of Rs.79,200/- per hectare. The sale deeds Ex.P/1 and Ex.P/3 were executed after seven months of acquisition of the land but the sale deed Ex.P/2 was executed before four months of the acquisition of the land which is much relevance but the sale deed Ex.P/2 is related to very small area of land and the acquired land (6.657 hectare) is 66 times bigger. Therefore, taking the aforesaid fact into consideration, appropriate deduction would be required. In such circumstances, value proposed by the land acquisition officer to first grade land which is Rs.67,120/- per hectare would be the correct evaluation of the acquired land. Hence, it is held that the appellant is entitled to get compensation according to market value of the land at Rs.67,120/- per hectare along with other statutory benefits.

12. So far as the determination of value of the house is concerned, it appears that value of the entire house property has not been determined. Some part of the house has only been considered for the purpose of compensation on the ground that rest part of the house was newly constructed but this is not a reasonable and legal ground to discard the rest part of the house for determination of the compensation. Suryodai Prasad (PW-1) has categorically stated that near about 15 rooms were situated on the acquired land and other witness (PW-3) Rajendra Singh has also stated the same thing. Even the

respondent no.1's witness, Halka Patwari (DW-1) Ramnaresh Tripathi, has also accepted the fact that there were 10 to 12 rooms situated. So far as the statement of the valuer, Sunil (PW-2) is concerned, it is not acceptable as the report has been prepared without ascertaining the fact that whether the place inspected by him was a part of the acquired land or not. Similarly, he has evaluated price of the constructed house on the standard of the urban area in place of construction of village area. The price of the house has been determined at Rs.22569.84 by the land acquisition officer. The letter submitted by the land acquisition officer before the Reference court shows that there were three houses on the acquired land and the value has been determined only for one house. In the aforesaid circumstances, value of the house situated on the acquired land can be determined at Rs.50,000/-. Accordingly, market value of the house is determined at Rs.50,000/- in place of Rs.22569.84.

13. So far as the value of the two well is concerned, as all the lands have been considered to be irrigated land, therefore, separate compensation cannot be given for the means which make the land irrigated.

14. So far as the objection regarding not determination of the compensation for Medh and trees is concerned, in this regard except the general averments in the statement of the appellant, (PW-1) Suryodai Prasad and (DW-1) Ramnaresh Tripathi, nothing is on record to support the aforesaid claim. Therefore, without any cogent evidence, in these heads no compensation can be given to the appellant.

15. In view of the aforesaid discussion and finding, if the market value of the acquired land is calculated, it comes to Rs.4,46,817.84 (6.657 x 67,120/- per hectare) in place of Rs.3,03,025.64 and the market value of the house comes to Rs.50,000/- in place of Rs.22,569.84. Thus, total difference comes to Rs. 1,71,222.37 {Rs. 4,46,817.84 - Rs. 3,03,025.64 = Rs.1,43,792.20 and Rs. 50,000 - 22569.84 = Rs. 27,430.16 (Rs. 1,43,792.20+Rs. 27430.16= Rs.1,71,222.37)}. Hence, the appellants and the respondents no. 2 to 4 are entitled to get Rs.1,71,223/- as compensation along with other statutory benefits. But, in this appeal the appellant has only claimed enhancement of compensation to the tune of Rs.1,04,600/- on the date of filing of the appeal i.e. 27.2.1999. Therefore, it is held that the appellant and the respondents no. 2 to 4 are entitled to the enhanced amount of compensation to Rs.1,04,600/- in this case. Accordingly, the question no. 2 is answered.

16. Question no. 3 : In view of the aforesaid discussion and findings of the questions no. 1 and 2, impugned judgment is set-aside and the claim of the appellant for enhancement of compensation to Rs.1,04,600/- is accepted and, therefore, the respondents no.1 and 5 are directed to pay the aforesaid enhanced amount of compensation i.e. Rs.1,04,600/- (Rs. One lakh four thousand six hundreds only) to the appellant and the respondents no. 2 to 4 and also pay interest as per the provisions of Section 28-A of the Land Acquisition Act on the aforesaid enhanced amount along with cost of the appeal. Counsel fee be

also paid as Rs.2000/- subject to certification in accordance with law.

17. The appeal is allowed and disposed of accordingly.