

(2007) 07 JH CK 0008
In the Jharkhand High Court

Mohata Concerns Limited

APPELLANT

Vs

The Deputy Commissioner and Others
 Secretary,
Agriculture Produce Market Committee and Another Vs
Mohata Concern Limited and Others

RESPONDENT

Date of Decision : 27-07-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 12, 18, 23, 4

Citation : (2008) 4 JCR 725

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Both these appeals are disposed of by this common judgment since they arise out of the same impugned order passed by the Land Acquisition Officer u/s 18 of the Land Acquisition Act.

2. Facts of the case in brief are that by notification dated 1.2.1982 published u/s 4 of the Land Acquisition Act, the State Government sought to acquire 14.81 acres of land situated at Jhumaritelaiya belonging to several recorded tenants, for the purposes of construction of buildings of the Krishi Bazar Samittee. The appellant in FA. No. 37 of 1997 namely Mohata Concerns Limited had owned and possessed 3.97 acres of land out of aforesaid total area on which a bungalow and outhouses were constructed. The land was purchased by the appellant for the purposes of establishing its own factory and business. The appellant filed its objection u/s 5 of the Act, praying for release of the lands and in the alternative, to pay compensation at the rate of Rs. 30,000/- per kattha of the land. In the subsequent amendment in the reference proceeding, the rate claimed was recalculated and mentioned at Rs. 73,150/- per kattha. However, the lands were not released from acquisition and notification was published on 21.10.1982 u/s 6 of the Act declaring that the appellant's land along with lands of several raiyats are to be acquired by the Government for public purposes. Though, objection of

the appellant was received but no compensation was fixed or declared by the competent authority within a reasonable time. However, the Collector had assessed the compensation at Rs. 1,95,021/- for the entire lands of the appellant. The amount so assessed was seriously challenged by the appellant as being unreasonable, meager and not in proportion to the market value of the land. The appellant sought therefore to refer the dispute to the District Judge for adjudication. The application for reference was not forwarded promptly by the Collector to the competent court and this had led the appellant to undertake series of litigations by way of filing writ applications before the High Court and pursuant to the orders passed in the last such writ application, the dispute was referred by the Collector to the District Judge, Koderma u/s 18(1) of the Land Acquisition Act and on receiving the same, the case was registered as Reference Case No. 779 of 1992. In the proceeding before the Reference Court, the Secretary, Bihar State Agricultural Market Board (appellant in F.A. No. 65 of 1997) had intervened and was made a party respondent. Both the parties had adduced their respective evidences both oral and documentary and on the basis of the evidences so adduced, the Reference Court by its judgment dated 25.4.1997 and corresponding Award dated 3.5.1997, enhanced the compensation payable to the appellant to Rs. 4,96,250/- at the rate of Rs. 5,000/- per kattha for the entire lands and in addition, awarded solatium at the rate of 30% of the value from the date of notification dated 1.2.1982 and interest at the rate of 12% for the first year from the date of the notification and at the rate of 15% for the subsequent years till final payment of the total compensation amount.

3. Being aggrieved by the amount of compensation as awarded by the Reference Court, the appellant Mohata Concerns Limited has preferred the instant appeal (F.A. No. 37 of 1997) for enhancement of the amount of compensation. A cross appeal has been filed against the same impugned judgment of the Reference Court by the Secretary, Bihar State Agricultural Market Board, Koderma which has been registered as F.A. No. 65 of 1997.

4. The appellant Mohata Concerns Limited has assailed the impugned Award of the Reference court on the ground that the amount of compensation as awarded by the Reference Court was without proper basis, arbitrary and without taking into consideration the actual market value of the acquired lands by reference to the rates fetched by the adjoining lands at or about the date of notification u/s 4 of the Act. Learned Counsel for the appellant Mohata Concerns Limited, while referring to the evidences adduced in the proceeding, submits that besides the oral evidence of the witnesses, the appellant had also adduced documentary evidence including two sale deeds (Ext.-2 and 2/A) pertaining to the sale of the lands adjacent to the land under reference in this case and both the sale deeds were executed five months prior to the date of the notification u/s 4 of the Act and the lands were purchased at Rs. 20,000/- per kattha. Furthermore, the witnesses not only of the appellant, but also of the respondents had acknowledged that the acquired lands were situated on up-lands by the side of

national highway and within close proximity of the railway station, market, official and private buildings and within the municipal area with amenities of electricity and water. The Reference Judge though had found the potential value of the acquired lands as being much higher than what was assessed by the Collector on account of the location and situation of the lands within the municipal area and of its being in close proximity of other developed lands, but fixed the rate at Rs. 5,000/- per kattha without any basis whatsoever and without appreciating the evidence in proper perspective. Learned Counsel submits further that on considering the existing market value of the land and its future potential, the Reference Judge ought to have awarded compensation at the rate of the market value, as indicated in the sale deeds (Ext.-2 and 2/A). Furthermore, the Reference Court ought to have also considered the fact that the appellant was put to an unjustified harassment of protracted delay and the repeated litigation which the appellant was constrained to undertake during the period of more than 12 years from the date of notification in getting its dispute referred to the Reference Court and as such, the Reference Judge ought to have awarded cost in favour of the appellant at least at the rate of 15% of the market value of the land.

5. The appellant in F.A. No. 65 of 1997 (R) has assailed the impugned Award of the Reference Court on the ground that the enhancement of the amount of compensation was exceptionally high and inflated and it does not correspond to the actual market value of the acquired lands. Assailing the enhancement of compensation made by the Reference Court over the amount assessed by the Collector, the appellant has disputed the applicant's claim that the lands acquired were situated within the urban area. Assertion of the appellant on the contrary is that the lands were located at far off distance from Koderma Railway Station and is not situated in the commercial area or within the town of Jhumaritelaiya since the market is also at the distance of more than one kilometer from the market, bus stand, school and cinema hall. It is also contended that the lands were on a lower level and it had involved huge expenditure to fill up the land and to develop it in order to enable construction over the same. Learned Counsel for the appellant argued that the Reference Judge has erred in refusing to rely upon Ext.-B which is the Valuation Khatiyan obtained from the local Sub-Registrar's office and also on Exts.-A/1 and A/2 despite the fact that these documents clearly establish and indicate the actual market value of the lands fetched for the adjoining lands of the area. Learned Counsel for the appellant has raised the plea of limitation by contending that the notification u/s 4 of the Act was admittedly issued on 1.2.1982 and the declaration u/s 6 of the Act was notified on 21.1.1982 followed by notice u/s 9 of the Act upon the applicant on 7.1.1983 and the Award was prepared by the Collector on 20.9.1986. Yet, the Reference case before the Reference Court was registered on 2.12.1992 i.e. after lapse of more than six years and as such, the Reference case itself was barred by limitation, which ought to have been dismissed out rightly. The appellant has claimed that the compensation for entire

lands" as assessed by the Collector, was on the basis of the Valuation Khatiyān and the Certified Valuation Report obtained from the sub-registrar's office and the rate assessed by the Collector at Rs. 25,000/- per acre i.e. about Rs. 1,000/- per kattha was quite reasonable and just, corresponding to the market value of the lands on the date of notification and the enhancement of the rate as made by the Reference Court in its Award is, arbitrary, without basis and beyond jurisdiction.

6. Short points for determination in both these appeals are, whether the amount of compensation awarded by the Reference Judge was just and proper, corresponding to the market value of the lands, and the amount awarded is based on proper appreciation of the evidences on record. Another question which would arise is, whether the Reference Case was barred by limitation.

7. As regards the second issue concerning limitation, it may be noted that though the plea was taken by respondents in the proceeding before the Reference Court, but the same was not pressed and no finding came on the issue relating to limitation. Nevertheless, since the issue has been agitated in this appeal, it would be appropriate to consider the facts and circumstances of the case and relevant dates in order to appreciate the plea. Admittedly, the Award was prepared by the Collector on 20.3.1986 and the Reference Case was registered after more than six years on 2.12.1992. The explanation offered by the applicant, which was also considered by the learned court below, was that the publication of the notification u/s 4 of the Act was made on 1.2.1982 and was published only in the Hazaribagh District Gazette. The applicant came to know about the notification on 14.5.1982 and within 30 days of the knowledge, had filed its objection u/s 5A of the Act on 18.6.1982. The notification u/s 6 of the Act was published on 21.10.1982 again in the Hazaribagh District Gazette and not in any locally circulated newspaper. Shortly thereafter, a notice u/s 9 of the Act was served upon the applicant on 7.1.1983 against which, applicant had filed its objection on 8.1.1983 which was duly received by the Land Acquisition Officer, Hazaribagh and a copy thereof was received by the Bihar State Agricultural Marketing Board, Patna and endorsement was made by the concerned authorities that the objection would be considered on 15.2.1983. Yet, no inquiry was conducted either on 15.2.1983 or within a period of two years from the date of receipt of the applicant's objection and such state of affairs continued till 1986, although the representative of the applicant used to visit the office of the Collector regularly. Since no Award was prepared by the Collector within a period of two years from the date of notification, the applicant by invoking provisions of Section 11 of the Act, filed a writ application before the High Court at Patna vide CWJC No. 991 of 1989 (R). The respondents appeared in the writ petition on 8.1.1990 and it was in course of hearing of the writ application on 12.2.1990, that the counsel for the respondent Board informed about the Award of the Land Acquisition Officer by producing certified copy of the Award dated 23.9.1986 and a copy thereof was served on the applicant's Advocate. Accordingly, on 21.2.1990 the writ application was dismissed as withdrawn. Thus, it was for the

first time on 12.2.1990 that the applicant came to know about the Award passed by the Collector and also of the fact that a sum of Rs. 1,95,021/- was declared as compensation payable to the applicant. Within six weeks from the date of knowledge, the applicant filed a petition before the Deputy Commissioner, Hazaribagh on 16.3.1990 praying for reference of the dispute raised by way of applicants objection against the assessed amount of compensation, to the District Judge, Hazaribagh u/s 18 of the Act. The Deputy Commissioner, Hazaribagh while refusing to make any reference of the dispute disposed of the petition on 5.4.1991 directing the applicant to file a petition before the competent court. Against the aforesaid order, applicant preferred a writ application before the Patna High Court on 30.4.1991 which was registered as CWJC No. 1124 of 1991 (R). The impugned order dated 5.4.1991 of the Deputy Commissioner, Hazaribagh was quashed by the High Court by its order dated 15.5.1991 with a direction to the Deputy Commissioner to make reference u/s 18(1) of the Act preferably within six weeks from the date of the order. Pursuant to the aforesaid order of the High Court, the applicant filed a fresh petition before the Deputy Commissioner, Hazaribagh on 26.6.1991 for making reference of its case to the District Judge, Hazaribagh and ultimately, vide order dated 20.3.1992 the Deputy Commissioner, Hazaribagh made the reference u/s 18 of the Act to the District Judge, Hazaribagh. However, the reference was received by the Reference Court on 2.12.1992 and was registered as Land Reference Case No. 779 of 1992.

Learned Counsel for the applicant / appellant, Mohata Concerns Limited submits that the delay in registration of the reference case was not occasioned on account of any lapse or failure on the part of the applicant. Rather, as would be apparent from the background circumstances, the delay was occasioned entirely on account of the fault and lapses of the respondents, firstly on account of the fact that notification was intentionally not published in any of the daily circulated newspapers and secondly, in refusing to entertain the applicant's application for reference and for which, applicant had to resort to file writ application before the High Court. Learned Counsel adds further that the application for reference of its case for adjudication to the District Judge was made by the applicant within a period of limitation, which was also received promptly by the concerned authorities of the respondents. The applicant was never served with a copy of the Award passed by the Collector and it was only in course of hearing in the writ application, that for the first time, it was made known to the applicant on 12.2.1990 that an Award was passed by the Collector fixing the payable compensation. The applicant had thereafter filed his application before the Collector for making reference to the District Judge within one month from the date of its knowledge of the Award.

8. Respondents have not denied or disputed the statement relating to the background circumstances as put forward by the applicant. It is apparent from the background circumstances as detailed above, that no notice of the Award was served on the applicant as was required under the provisions of Section 18

of the Act and it was revealed to it for the first time on 12.9.1990 and that too in course of hearing of the writ application preferred by the applicant before the High Court. Under such circumstances, the period of limitation would run from the date of knowledge of the Award which, admittedly in the instant case, is 12.2.1990.

9. Proviso (b) to Section 18(2) of the Land Acquisition Act prescribes the period for filing an application for reference as six weeks from the date of receipt of the notice from Collector u/s 12(2) of the Act or within six months from the date of the Collector's Award whichever period shall first expire. The expression "six months from the date of the Collector's Award" used in the proviso must mean the date when the Award is either communicated to the party or is made known either actually or constructively. As such, for the purpose of determining the period of limitation in such case, it is necessary to find out as to when the party had knowledge of the contents of the Award.

In the instant case, date of the Award must be construed as the date on which the applicant gained knowledge of the Award i.e. 12.2.1990. Application for reference u/s 18 of the Act was made by the applicant within six weeks i.e. within prescribed period of limitation. Petition was illegally refused to be entertained by the Deputy Commissioner. Applicant was therefore, constrained to approach the High Court by way of filing writ application and it was only pursuant to the orders of the High Court passed in the writ application, that the Deputy Commissioner had entertained the application filed by the applicant u/s 18 of the Act on 20.6.1991. Thereafter, Deputy Commissioner had made reference u/s 18 of the Act to the District Judge, Hazaribagh. Yet again, despite the reference was made by the order of the Deputy Commissioner, Hazaribagh on 15.5.1991, it was eventually received by the Reference Court on 2.12.1992 for reasons which cannot be attributable to the applicant at all.

In the light of the above discussion, I find that the plea of limitation as advanced by the appellant in F.A. No. 65 of 1997 is misconceived and not maintainable.

10. Now coming to the first issue, as to the assessment of the amount of compensation, as awarded by the Reference Court. Section 23 of the Land Acquisition Act lays down the matters to be considered by the Reference Court for determining compensation to be awarded for the lands acquired under the Act. The provisions of Section 23 lays down that the first consideration should be the market value of the land on the date of the publication of the notification u/s 4 of the Act. Further consideration should be the damage bona fide resulting from the diminution of the profits of the lands between the time of publication of the notification u/s 6 of the Act and the time of Collector taking possession of the land.

11. Both parties have adduced their respective evidences to suggest the market value of the acquired lands. The applicant besides adducing evidence of the witnesses, has adduced two sale deeds (Ext.-2 and 2/A) dated 30.4.1981 and

10.4.1981 respectively. It is not denied or disputed that the lands demised under the aforesaid two sale deeds are adjacent to the lands acquired in the instant case. Respondents have argued that neither of the sale deeds can be reliable since they represent only small pieces of land and such lands are not comparable to the lands acquired in the instant case. This aspect of the objection needs to be considered by referring to the evidences adduced by the parties. From the oral evidence of the applicant's witness, it transpires that the acquired lands are located within the municipal area with amenities of water and electricity, by the side of the national highway and at a higher level as compared to the adjoining lands and is located within proximate distance from railway station, market, cinema hall, schools and residential buildings within the town of Jhumaritelaiya. The evidences also indicate that certain structures did exist over the land on the date of acquisition. These facts are also confirmed even by the witnesses examined by the respondents particularly O.P.W.1. The witness No. 4 of the respondents, who is kanungo, has acknowledged that the applicant's land was class-I land situated at a higher level by the side of the highway and located within proximate distance from the Tilaiya market, cinema hall and railway station and there are amenities of electricity and water available to the land. There is no doubt, therefore, that the acquired lands of the applicant was located within the urban area of the town possessing high potential for commercial value. The fact that the land existed at a high level, as compared to the adjoining lands on which there existed house construction, is indicative of the fact that the land did not need any further investment for development and could be readily used for building and commercial purposes.

The Land Acquisition Officer appears to have based his assessment of the value of the acquired lands on the Valuation Khatiyani and the Valuation Report which he had obtained from the office of the Sub-Registrar. These are the same documents which the respondents had also relied upon during the proceedings before the Reference Judge. The respondents had also relied on two sale deeds (Ext.-A and A/1) dated 1.7.1982 and 2.7.1981. Both these documents were considered by the Reference Judge and were rightly rejected on the ground that the makers of the sale deeds were not called upon to depose and further, that the lands involved in the sale deeds are not comparable to the lands acquired in the instant case since they are fallow lands. The Valuation Report and the Valuation Khatiyani were also rightly rejected by the Reference Judge again on the same ground that neither the Sub Registrar, nor any officer of the Sub-Registrar's office were called upon to depose to prove the sales. The Reference Court while accepting the oral evidence of the witnesses adduced by the applicant, and finding support thereto from the evidences adduced by the respondents, had acknowledged the fact that the acquired lands were within the municipal area of the town with facilities of water and electricity and within the urbanized locality and that the railway station, bus stand, schools, official and private buildings are located within the near vicinity of the lands. The Reference Judge has also accepted the evidence which had indicated that the acquired

lands did possess potential for immediate commercial value with prospects of future enhanced value. The Reference Judge had also recorded his finding that the compensation awarded by the Land Acquisition Officer was highly disproportionate and does not correspond to the market value of the lands as it could have fetched on the date of publication of the notification u/s 4 of the Act. Though the Reference Judge had also considered the sale deeds (Exts.-2 and 2/A) adduced by the applicant but did not proceed further to make any reference to the same while assessing the amount of compensation, nor has assigned any reason as to why two sale deeds should not be relied upon.

12. From the evidences on record, it would appear that the documents relied upon by the respondents for ascertaining market value of the acquired lands were not reliable since they did not represent the value of any land which could be comparable to the acquired lands of the instant case. Thus, the only documents which are available in the evidences are the two sale deeds (Exts.-2 and 2/A) adduced by the applicant both of which were executed in the month of April 1981 i.e. more than eight months prior to the date of notification published u/s 4 of the Act in respect of the land under reference in this case. The consideration price for the lands demised under both sale deeds were at the rate of Rs. 20,000/- per kattha. Though, the lands involved in both these sale deeds had comprised small areas and comparatively small pieces of land, yet the fact remains that the lands are admittedly adjoining to the lands acquired in this case and are comparable to the acquired lands. These two sale deeds being the only documents available for enabling assessment of the market value of the acquired lands, do clearly indicate that the acquired lands had the potential to fetch a price of Rs. 20,000/- per kattha at least eight months prior to the date of notification u/s 4 of the Act published in respect of the lands in this case. The two sale deeds (Exts.-2 and 2/A) can definitely be treated as exemplars providing adequate basis for assessing the market value of the acquired lands which could be obtained on the date of notification. The acquired lands did have potential to fetch higher market value than what was assessed by the Land Acquisition Officer and even the rate assessed by the Reference Court. As rightly pointed out by the learned Counsel for the applicant / appellant in F.A. No. 37 of 1997, assessment of compensation payable as made by the Reference Court at the rate of Rs. 5,000/- per kattha for the lands acquired, is without any reasonable basis and without reference to the actual market value of the lands. Since the two sale deeds (Exts.-2 and 2/A) are reliable and do provide reasonable basis for assessment of the market value, the rate of Rs. 20,000/- per kattha can reasonably be fixed as the market value of the lands acquired in the instant case. Assessment of the rate as made by the Reference Court being without proper basis and being not in consonance with the evidences on record, the amount of compensation as awarded by the Reference Court cannot be sustained. I find merit in this appeal. Accordingly, the amount of compensation is enhanced and the impugned Award is accordingly modified by way of enhancement in the amount of compensation payable to the applicant / appellant of F.A. No. 37 of

1997 at the rate of Rs. 20,000/- per kattha for the entire acquired lands and the total amount calculated at the above rate along with the amount of solatium fixed by the Reference Court on the total value and at the rate of interest stipulated by the Reference Judge shall be payable to the appellant.

13. As regards the cross appeal (F.A. No. 65 of 1997), in the light of the discussions and the reasons assigned above, I do not find any merit in this appeal and, therefore, the same is hereby dismissed, However, considering the facts and circumstances, the parties shall bear their own costs.