

(1968) 06 OHC CK 0021

In the Orissa High Court

Case No : M.A. No's. 27 and 38 of 1964

Musmat Khuduna Bibi alias Khatun Bibi

APPELLANT

Vs

State of Orissa
 State of Orissa Vs Mat. Khuduna Bibi
alias Khatun Bibi

RESPONDENT

Date of Decision : 18-06-1968

Acts Referred:

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

Citation : (1968) 34 CLT 1043

Hon'ble Judges : Patra, J;G.K. Misra, J

Bench : Division Bench

Advocate : B. Mohapatra, R.K. Mohapatra and B.K. Mohanty, in M.A. No. 27 of 1964 and A.G. in M.A. No. 38 of 1964, for the Appellant; A.G. and K.C. Jagadeb Ray in M.A. No. 27 of 1964 and B. Mohapatra, R.K. Mohapatra and B.K. Mohapatra, in M.A. No. 38 of 1964, for the Respondent

Final Decision : Allowed

Judgement

Patra, J.—These, are two appeals from an Award dated 13-11-1963 passed by the Special Judicial Officer, Land Acquisition, Rourkela in a reference u/s is of the Land Acquisition Act I of 1894 (hereinafter referred to as the Act). In this judgment Mst. Khuduna Bibi alias Khatun Bibi, the Appellant in Misc. Appeal No. 27/64 will be referred to as the Appellant and the State of Orissa as the Respondent.

2. A total area of 17 acres of land of village Nabulpali (situated within town of Rourkela) were acquired by Government under two notifications-16.65 acres of arable land under notification dated 1st July, 1958 and 0.35 acre of homestead land under notification dated 13-3-1959-for the purpose of expansion of the Railway facilities to serve the Steel Plant at Rourkela. These lands belonged to the Appellant who claimed compensation of Rs. 30,000/- per acre. The Land Acquisition Officer however allowed Rs. 13,525/- as compensation for the arable land; Rs. 203. 50 ps. as compensation for trees standing thereon and Rs. 262.

50 ps. as compensation for the homestead land, thus fixing the total compensation at Rs. 14,050/-. The statutory compensation of 15 per cent on the total compensation does not appear to have been awarded by the Land Acquisition Officer. On a reference u/s 18 having been made by the Collector, the learned Special Judicial Officer after examining the witnesses and considering the documents produced before him and after making a local inspection of the land 1 in question found that although the land acquired formed a compact block, yet the land has on its entire southern border either the Rourkela town main road or a branch road, and as such that portion of the land was fit to be let out to prospective business men for opening shops. He estimated that this portion of the acquired land would be 1/8th of the entire block. While therefore valuing the other 7/8th portion of the acquired land at Rs. 2500/- per acre, he fixed the value of the aforesaid 1/8th portion of the land at Rs. 8,000/- per acre and accordingly fixed the market value of the entire 17 acres at Rs. 54, 180/-. On this amount he allowed statutory compensation at 15 per cent amounting to Rs. 8, 127/-, thus fixing the total compensation, payable at Rs. 62, 307/-. He further directed that the Appellant should get 6 per cent interest on the difference between this amount and the amount, if any deposited as assessed compensation in favour of the Appellant for the period from the date of dispossession till payment. Being aggrieved by the Award the Appellant-objector filed Misc. Appeal No. 27/64 claiming compensation at Rs. 30,000/- per acre.

3. The State of Orissa being aggrieved by the decision so far as it relates to the amount of compensation over and above what had been offered by the Collector, filed Misc. Appeal No. 38/64 praying therein that the compensation awarded by the Special Judicial Officer should be set aside and the compensation allowed by the Collector should be upheld. These two appeals have been heard together and this judgment will govern both.

4. The only contention put forward by Sri B. Mohapatra appearing for the Appellant 8 that the compensation fixed by the learned Court below is arbitrary and inadequate and is not in accordance with the principles which should govern the fixation of compensation in such cases. The correctness of the order under appeal is attacked on behalf of the Respondent on the main ground that the potentiality of the area now acquired having been non-existent at the time of issue of the notice u/s 4(1) of the Act, it should not have been taken into consideration.

5. Compensation for acquired lands has to be fixed in accordance with Section 23 of the Act. It is now well settled that the market value of the acquired land as contemplated u/s 23 of the Act means the value which a willing purchaser would pay to a willing vendor for getting the land in question. In the well known case of the Privy Council reported in AIR 1939 98 (Privy Council) their Lordships while observing that the value of land is to be fixed by a consideration of the prices that have been obtained in the past for land of similar quality and in similar position, laid down as follows:

But, sometimes, it happens that the land to be valued possesses some unusual, and it may be, unique features as regards its position or its potentialities. In such a case the arbitrator in determining its value will have no market value to guide him, and he will have to ascertain as best as he may from the materials before him, what a willing vendor might reasonable expect to obtain from a willing purchaser, for the land in that particular position and with those particular potentialities. For the land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined that time under the Indian Act being the date of the notification u/s 4(1), but also by Reference to the uses to which it is reasonably capable of being put in future. It is possibilities of the land and not its realised possibilities that must be taken into consideration.

Their Lordships also laid down in that case that in fixing the market value the potential value also is to be estimated even though the prospective buyer may be only one person.

6. Keeping these principles in view we would now proceed to consider the evidence adduced in this case. The acquisitions in question had been made in 1958 and 1959 but no evidence relating to sale transaction of these two years have been adduced before the lower Court. Witness No. 1 for the objector had purchased 18 cents of land for Re. 10,000/- in October, 1952 under sale deed Ex. 1. It is however admitted by him that before this purchase there was a katcha house standing on that land where the witness was staying and as he badly needed a house at Rourkela he purchased the land. Thus there were special considerations for this witness to purchase that land at such a high price and it cannot afford a criterion to determine the value of the lands in that locality. The two other sale deeds produced in this case are Exs. 2 and 1 relating to years 1953 and 1950, and were produced by witness No. 2 for the objector. Under Ex. 3 this witness purchased 12 decimals of land for Rs. 700/- in 1950, and under Ex. 2 he purchased 14 decimals of land for Rs. 700/- in the year 1953. According to this witness both these lands were at some distance from the main road while the lands acquired in this case are situated by the side of the main road. Witness No. 4 says that he purchased 12 decimals of land on the main road at Mahulpali for Rs. 42,100/- in the year 1960 in an auction held by the custodian of Evacuee Property. Apart from the fact that this land is about 300 to 400 yards off from the disputed land, witness No. 4 has admitted that this purchased site adjoins his residential house. Thus that site had special value to this witness and the price paid for it cannot be an indication of the value of the lands in that locality. The 5th witness for objector says that before acquisition the Appellant had given temporary lease of different bits of the disputed land to 40 or 50 lessees and was realising rent of Rs. 3000/- to Rs. 400/- a month from them. This statement however is not supported by any accounts or by any other documentary evidence and has rightly been overlooked by the learned Judge. Similarly the 6th witness had made a statement that he had taken 10 cents of land of the objector on monthly rent of Rs. 100/-. This statement too is not supported by any

documentary evidence. The 7th witness is the son of the Appellant and he says that prior to the construction of the Steel Plant of Rourkela the land now acquired was being used for cultivation purposes and that after the construction of the Steel Plant flame portions were being leased out temporarily to persons for holding shops. According to him he was realising Rs. 5100/- from the lessees, per month. Strangely enough not a scrap of paper has been produced to evidence these leases and no account has been produced by him in support of his statement. The 8th and the last witness for the objector stated that he had purchased 4 decimals of land on 8-7-1952 from one Brijmohan Sandasena and his brothers for Rs. 2000/- under the sale deed Ex. 4, for the purpose of construction of a house thereon and that this land is at a distance of half a mile from the disputed land and is situated on the main road. In cross-examination however he admitted that the real purchaser is his brother-in-law Onkarmalji Agarwala who has since constructed a house on the purchased plot. That apart Ex. 4 is not on record and we got it from the judgment of the lower Court that it was not produced in spite of directions issued by the Court to the Appellant. The learned Judge therefore rightly excluded Ex. 4 from consideration. On the Respondent's side only one witness had been examined from whom we get that the lands acquired in this case were required for the expansion of the Railway.

7. As stated before the learned Special Judge had made a local inspection of the acquired site and it would be necessary and useful to set down below his account of the location of the land:

...

6. The acquired plot was also shown to me and we travelled on the entire southern side of the plot from west to east. It is quite a long strip of mostly low-lying land, with length from west to east and with breadth of about 1/4th of the length, the breadth being from south to north. On the adjacent-south of part of this strip, runs the Rourkela main road and on its adjoining north, runs, throughout the Railway line. The plot on its eastern extremity has got the approach road to the new Rourkela Railway Station. A petrol pump owned by p.w. 7, the son of the objector, stands on the contiguous south of the acquired plot, at a place of about 1/3rd its stretch of length from the western side. To the east of this place, the acquired plot towards its southern side has a strip of land lying at a little higher level than the other portions of the plot, and this was shown to me as the 35 cents of homestead portion of the acquired plot. A new compound wall now stands on the south of the plot for about half the distance of its length from the north-eastern end towards the south and this compound wall was said to have been raised by the South Eastern Railway after acquisition of the plot. The acquired plot, so far as its southern border is concerned, stands for its greater portion by the side of the Rourkela main road and for a shorter portion by the side of a smaller road branching from the main road and leading towards the Rourkela Railway Station. It was represented from the objector's side that the southern-border portion of the acquired plot could easily be leased

out or sold at high prices. Although there are shops lying about the area where the acquired plot stretches from west to east, speaking on the whole, the place where the acquired plot stands appears to be not within the busy bazar area of Rourkela town, but somewhat outside it.

8. It has already been stated as to why the sale deed Ex. 1 cannot furnish any guide to determine the value of the lands in the locality. So far as Exs. 2 and 3 are concerned there do not seem to be any special circumstances to indicate that proper prices had not been paid for the lands purchased there under. Regarding the locality of the plots purchased under Exs. 2 and 3 it will be again useful to set down below the observations made by the learned Judge during local inspection:

...

4. I was then taken to the old Rourkela Railway station area. Outside the Station area and on the opposite side of the road was shown another plot, said to have an area of about 12 decimals which p.w. 2 was said to have purchased for Rs. 70/- in 1950 or 1953.

5. I was also shown another plot said to have an area of 12 to 14 decimals which p.w. 2 had purchased in 1950 or 1953 for Rs. 700/-. From the Rourkela main road, a small road runs to the South, about 200 yards from the main road and by the side of the above branch road, this plot stands, and at present a two storied building stands constructed on the plot.

...

It would thus appear that the lands covered by Exs. 2 and 3 and the lands acquired in the present proceedings are situated in the same locality. In the absence of any documentary evidence to show sale transactions of lands in the locality during the years 1958 and 1959 when the acquisitions in this case took place, the only other alternative would be to determine with reference to sale deeds of earlier years the value which the disputed lands would have fetched during those past years and thereafter determine the value of the lands at the time of acquisition keeping in view the circumstances which contribute either to the increase or decrease in prices. Ex. 3 which is of the years 1950 shows that 12 decimals of land had been purchased for Rs. 700/which works out at Rs. 58/- per decimal of land. Ex. 2 is of the year 1953 which shows that 14 decimals of land with two houses on it were purchased for Rs. 700/-. According to this sale deed the value per decimal of land comes to Rs. 50/-. It can therefore be held that the price of the disputed lands in 1953 would have been Rs. 50/- per decimal or Rs. 5000/- per acre. Admittedly after 1953 the Steel Plant was established at Rourkela and as a result thereof Rourkela has become a highly industrial area and has assumed considerable commercial importance and consequently prices of lands have considerably gone up. The Steel Mills have started working in 1956 and the present acquisition took place about 2 years thereafter. These circumstances have definitely contributed to the increase in the

price of lands in and around Rourkela and in our opinion it would be modest to fix the value of lands in Rourkela in 1958 by adding 50% to the value which the lands would have fetched in 1953. The value so determined of the disputed land would thus come to Rs. 7500/- per acre. As indicated before the disputed land is situated in the heart of the Rourkela town and is very near to the Rourkela Railway Station. Its proximity to the Railway Station would have considerably enhanced its value for purposes of business. In fixing the market value therefore its potential value will also be taken into consideration and as has been done in the case reported in *Kasinath Mukherjee v. Collector of Puri* 227 C.L.T. 185. We consider that 25% of the site value as estimated above would be a fair estimate of the potential value. This extra 25% amounting to Rs. 1875/- should be added to the amount of Rs. 7500/- as indicated above. Thus we fix the market value of the acquired land at Rs. 9375/- per acre. To the total value of the acquired lands so determined should be added Rs. 203.50 being the value of the trees standing thereon as determined by the Land Acquisition Officer and about the correctness of which there is no dispute. On the total amount so arrived at the Appellant would be entitled to 15% as statutory compensation. The Appellant would also be entitled to interest at 6% percent per annum on the excess amount awarded by this Court over that awarded by the Collector from the date on which possession was taken or if possession was taken on different dates, from the last of such dates, till the date of payment of such excess into Court.

9. In the result, Misc. Appeal No. 27/64 is allowed to the extent indicated above and Misc. Appeal No. 38/64 is dismissed. But in view of the partial success of the Appellant in Misc. Appeal No. 27/64, there would be no order for costs in both the appeals in this Court.

G.K. Misra, J.

10. I agree.