
(2015) 02 OHC CK 0047
In the Orissa High Court
Case No : LAA No. 50 of 2005

Nabakishore Rajguru Mohapatra

APPELLANT

Vs

The Land Acquisition Officer

RESPONDENT

Date of Decision : 16-02-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 17(4), 18, 4(1), 54, 6(1)

Citation : (2015) 02 OHC CK 0047

Hon'ble Judges : B.K. Nayak, J.

Bench : Single Bench

Advocate : S. Nanda, B. Mohanty, B.S. Panigrahi and A.K. Dash, for the Appellant

Final Decision : Dismissed

Judgement

B.K. Nayak, J.—This appeal has been filed under Section 54 of the Land Acquisition Act, 1894 challenging the order dated 13.05.2005 passed by the learned Civil Judge (Senior Division), Rayagada in M.J.C. No. 12 of 2000.

2. The appellant's land under Plot Nos. 51, 87 and 109 in village-Pitamahal in the district of Rayagada was acquired for the purpose of construction of canal of Bishnuguda Minor Irrigation Project by applying the emergency procedure under Section 17(4) of the Land Acquisition Act (in short "the Act"). Notification under Section 4(1) read with Section 17(4) of the Act was issued on 10.06.1998 and subsequently declaration under Section 6(1) of the Act was issued. Award was passed by the Land Acquisition Officer on 07.09.2002 for an amount of Rs. 19,168/- in favour of the appellant for acquisition of land to the extent of Ac.0.94 in plot Nos. 51, 87 and 109 including 30% solatium and 12% additional compensation. The appellant received the compensation on protest and filed application under Section 18 of the Act, on the basis of which, MJC No. 12 of 2000 was registered by the learned Civil Judge (Senior Division), Rayagada.

3. The claim of the appellant was that the acquired land in plot No. 109 was part

of proposed MMG township project at the time of its acquisition and it was having all advantages and facilities for urbanization. The said plot was adjacent to railway track and the national highway, and on either side of it situate shops, hotels and residential houses. The village was a flourishing village with school, industries and government offices. That apart, crops like cotton and kandulu were raised giving an annual income of Rs. 5,000/- per acre. Market value of the plot in question was assessed at a lower side without taking the facilities and advantages into consideration. The plot was part of proposed MMG township project, for which the appellant had entered into agreement with M/s. Gajapati Estate Pvt. Ltd and the estate developer had agreed to pay @ Rs. 2.00 lakh per acre to the appellant.

It was further claimed by the appellant that plot Nos. 51 and 87 were situated in front of each other on either side of the village road closed to the appellant's house and crops like cotton, kandulu and maize and vegetables were being cultivated giving an annual yield between Rs. 2,000/- to Rs. 4,000/- per acre. It was also stated that the national highway, railway line, school and industries were situated at a little distance from the plots and the market value of these plots should be Rs. 1.00 lakh per acre.

4. The case of the respondent was that all relevant provisions and norms were followed and adequate field enquiry was made in assessing the market value of the land and accordingly compensation was fixed.

5. In the proceeding, the appellant examined two witnesses including himself as P.W.2 and the respondent examined two witnesses, namely, the Senior Assistant and the Amin of the Land Acquisition Office, Rayagada. Besides, the parties also relied upon certain documents.

On consideration of the evidence on record, the court below enhanced the compensation in respect of plot No. 109 determining the market value thereof at Rs. 43,080/-, and deducted 1/3rd thereof towards development charges per acre. After such deduction the valuation of plot No. 109 was fixed at Rs. 28,720/- per acre. The court also granted all other statutory benefits. However, in respect of plot Nos. 51 and 87, no enhancement was made.

6. Learned counsel for the appellant submits that the court below has not taken into consideration the advantages and the future potentiality of the acquired land, particularly, plot No. 109, which was part of a real estate project, MMG township, in respect of which the appellant had entered into agreement with the real estate developer, M/s. Gajapati Estate Pvt. Ltd. and that the court below has not taken into consideration this aspect in its proper perspective.

Learned Additional Government Advocate, on the other hand, submits that the court below has determined the market value of the land after taking into consideration all necessary factors and on proper assessment of evidence and, therefore, there is no infirmity in the impugned order.

7. Admittedly, the acquired lands are dry lands. Evidence of the appellant's witnesses with regard to claim that the land was cultivable land, from which the appellant was deriving agricultural income has been disbelieved by the trial court. In absence of any documentary evidence with regard to such claim and taking into consideration the evidence that plot Nos. 51 and 87 were adjacent to a ravine and the evidence of the witnesses being inconsistent and contradictory, the court below rightly disbelieved the same.

8. Learned counsel for the appellant put more emphasis on the advantages and future potentiality of plot No. 109 stating that it was part of a real estate project and was being developed as a township along with other adjoining lands and the appellant had entered into an agreement (Ext.7) with the real estate developer for the said purpose and that the developer had agreed to pay to the appellant @ Rs. 2.00 lakh per acre for the said plot under the agreement (Ext.8) and that the court below did not consider those agreements in their true perspective.

Ext.7 was executed on 02.11.1997 authorizing the developer to develop the land. On the same day, Ext.8 agreement was executed between the appellant and the real estate developer fixing the valuation of the land in plot No. 109 at Rs. 2.00 lakh per acre. It is evident that in the year 1997, when the land was proposed to be acquired, the appellant was working as Additional L.R.-cum-Joint Secretary in the Law Department, Government of Orissa. He has however, denied the suggestion that having come to know that the land was proposed to be acquired he created documents under Exts.7 and 8 for the purpose of getting higher compensation.

Exts.7 and 8 are however mere agreements and admittedly no developmental work for the purpose of the proposed township was initiated and not a single plot out of the proposed development area was sold. Since, there is no contemporaneous sale deed in respect of any land in the village in question or within the proposed township area, the mere stipulation in Ext.8 that the valuation of the acquired plot would be Rs. 2.00 lakh per acre cannot be taken into consideration for determining the market value of the land on the date of notification for acquisition.

9. Reliance has also been placed by the appellant on Exts.10, 11 and 12, which are sale deeds. It appears that all the said three sale deeds were executed and registered in the year 2000 for sale of small patches of lands in mouza-Sunkarimantu. While under Exts.10 and 11, Ac.0.055 each was sold for a price of Rs. 5,000/- under Ext.12, Ac.0.110 was sold for Rs. 10,000/-. Lands under these sale-deeds situate within the developed real estate project area of M/s. Gajapati Estate Pvt. Ltd. The acquisition of the appellant's plots being much prior to the date of sale deeds under Exts.10, 11 and 12 and the advantages and potentiality of the lands sold under those exhibits being different, the trial court has rightly refused to rely on them for the purpose of determining the market value of acquired plot No. 109. However, taking into consideration the evidence with regard to the advantages and potentiality of the acquired plot No. 109 have its

situation in a residential locality with good road connection and other advantages, it increased the value of the same three fold and finally determined the market value by deducting 1/3rd of the value towards developmental cost, which cannot be said to be unreasonable or arbitrary.

It is not a case, where the trial court has ignored any material or evidence from consideration. On the contrary, evidence has been found to be properly assessed keeping in view the settled legal position about determination of the market value. Therefore, I find no infirmity in the impugned award and as such, the appeal is dismissed being devoid of merit.