**(1991) 02 PAT CK 0007**

**In the Patna High Court**

**Case No :** Appeal from Original Decree Nos. 1115, 1116, 1117, 1132, 1133, 1121 and 1122 of 1972

Nabizan Hussain and Others APPELLANT

Vs

The State of Bihar RESPONDENT

**Date of Decision :** 27-02-1991

**Acts Referred:**

**Citation :** (1991) 02 PAT CK 0007

**Final Decision :** Dismissed

# Judgement

B.N. Sinha, J.—First Appeal Nos. 1115, 1116, 1117, 1132, 1133, 1121 and 1122 of 1972 arise out of a common judgment dated 18th July 1972 of the Special Land Acquisition Judge, II, Patna by which he disposed of fifty-two Land acquisition cases on a reference being made to him u/s 18 of the Land Acquisition Act (hereinafter called the ''Act'') by which the learned Special Judge has allowed the reference in part. All the fifty two land acquisition cases were tried analogous by the Special Judge and the awardees have adduced common evidence both-oral and documentary. With the consent of the learned Counsel for the parties, all these seven appeals also have been heard together as they arise out of one and the same judgment and they are being disposed of by this judgment.

2. Notification No, 782 R dated 21-1-59 u/s 4 of the Act for acquisition of 25.09 acres of orchard land of village Dujra for Budh Grih Nirman Sahyog Samiti was published in Bihar Gazette dated 4th February 1959. Since this notification did not mention that the objections were being invited, this notification was cancelled and it was substituted by a fresh notification bearing No. D.L.A.P. 43/59-7655R dated 1st August 1959 which was published in the Bihar Gazette dated 12th August 1959. It appears from the rate report form (Ext. D) that the lands under acquisition were classified under three categories for the purpose of rating. Those orchard lands which were situated on village road or on approach road from the village road were classified as 1st Class lands. Lands which were

situated in the interior without the facility of an approach road were classified as 2nd Class lands. The third category consisted of Gairmazarua Am lands. Compensation for the 1st class lands was fixed at Rs. 1,150/- per katha but 20 per cent was deducted for providing facility of passage and as such compensation for 1st class lands was awarded at Rs. 920/- per katha. Compensation for class-II lands was fixed at Rs. 600/- per katha and for Gairmazarua Am lands at Rs. 200/- per katha. Petitions for reference u/s 18 of the Act were filed before the land Acquisition Officer by the owners of the lands under Acquisition claiming compensation at the rate of Rs. 1,500/- per katha and in some cases, even higher the maximum being at the rate of Rs. 3,000/- per katha. The parties also claimed different compensation in respect of trees, houses and wells which, according to them, were on those lands under acquisition. Hance, a reference was made to the learned Special Land Acquisition Judge-II, Patna u/s 18 of the Act. The learned Land Acquisition Judge has fixed the market value of the Class-I lands at Rs. 1,050/- per katha and that of Class-II lands at Rs. 700/- per katha. He has also ordered for statutory compensation of 15 per cent and interest at the rate of 6 per cent per annum till realisation on the enhanced compensation.

3. The learned Counsels appearing on behalf of the Appellants have assailed the impugned judgment passed by the learned Special Land Acquisition Judge on several grounds. Firstly, it has been submitted that the compensation fixed by the learned Special Land Acquisition Judge is too low as compared to the prevailing market value of similar leads in the locality. The Land Acquisition Officer has based the compensation paid in respect of the Class-I lands on the basis of two Kebalas Ext. F and Ext. F/I as is evident from the rate reports Ext. C and Ext. C/1. Ext. F is the certified copy of the sale deed dated 23rd November 1958 by which 1 katha and 15 1/2 dhurs of land, appertaining to plot No. 1035 was sold for Rs. 2041.25 paise. Ext. F/1 is the certified copy of the sale deed dated 23rd December 1958 in respect of 3 kathas 4 1/2 dhurs of lands of plot No. 1058 for Rs. 3,708.75 paise. The market value of the land on the basis of these two Kebalas works out at Rs. 1,100/- per katha which has been accepted by the Land Acquisition Officer for the purpose of determining compensation payable in respect of Class-I lands under acquisition as that according to him, was the market value of the comparable lands on the date of publication of the notification u/s 4(1) of the Act.

4. Sale deeds Ext. 1 series were filed on behalf of awardees to justify their claim for higher compensation. Ext. 1 the sale deed dated 25th May, 1954 in respect of 11 kathas 13 dhurkies for consideration of Rs. 19,000/- which works out to be little over Rs. 1,500/- per katha. It appears from the sale deed that the purchaser (vendee) has got his land on the eastern boundary of the land is also abutted by road on the west. Hence, the vendee could have offerred fancy price for that land. Ext. 1/a is the sale deed dated 21st July 1959 in respect of 1.38 acres of land for Rs. 44,000/- i.e. little less than Rs. 1,000/- per katha. Ext. I/b is the sale dated 5th September 1961 by which 5 dhurs and 5 dhurkies of land of the same village has been sold for Rs. 397/- i.e. about Rs. 1,100/- per katha.

 

Ext. 1/d is the sale deed dated 24th July 1959 by which 2 katha 10 dhurs of lands of the same village has been sold for Rs. 3,500/- which works at Rs. 1,400/- per katha. But it has got 12 feet wide road on its northern side. Ext. 1/e is the sale deed dated 8th August, 1959 in respect of 4 kathas of land of the same village for Rs. 5,200/- which works out at Rs. 1,300/- per katha. Ext. 1/f is the sale deed dated 23rd July 1959 in respect of 2 kathas of land for Rs. 2,500/- which works out at Rs. 1,250/- per katha. This land is abutted by a road on its southern side, as it appears from'' the sale deed. Ext. 1/g is the sale deed dated 28th September 1959 in respect of 2 kathas of land for Rs. 3,000/- which works out at Rs. 1,500/- per katha. Ext. 1/h is the sale deed dated 29th November 1959 in respect of 6 kathas of land appertaining to plot No. 1062 for Rs. 9,600/- which works out at Rs. 1,600/- per katha. It appears from the sale deed that it is abutted by a road on its western side and it is a homestead land situated in an inhabited area having residential houses on its southern and eastern boundary. Ext. 1/i is the certified copy of sale deed dated 18th September 1961 in respect of 1 katha of land for Rs. 1,600/- which comes out at Rs. 1,600/- per katha.

5. Learned Counsel for both the sides have agreed that u/s 23 of the Act, for determining the market value of the land being acquired, the bona fide sale transaction of comparable lands executed at the time of reasonably approximate to the date of notification u/s 4 of the Act is safe guide. Hence, apart from the reasons mentioned above, the sale deeds Ext. 1, Ext. 1/b, Ext. 1/h and Ext. 1/i cannot be taken into consideration. Sale deeds covered by Ext. 1/d, Ext. 1/f and Ext. 1/i are in respect of small areas of land and for this reason also they cannot furnish basis for determining the compensation; when vast area of land is being acquired. I am fortified in my view by a decision of a Bench of this Court in State of Bihar Vs. Mosafir Thakur and Others, . Sale deeds covered by Ext. 1/d and Ext. 1/f were executed after notification u/s 4(1) of the Act and sale deeds covered by Ext. 1/i and Ext. 1/g were executed after second notification u/s 4(1) of the Act and for this reason also, these sale deeds cannot furnish safe basis for determining the compensation in this case because the prices of the land must have shot up due to present project of acquisition of land for construction of houses.

6. The awardees have also filed certified to be true copy of the sale deed Ext. 1/c which is dated 7th November 1958 in respect of 5 kathas of land for Rs. 15,500/- which works out at Rs. 1,100/- per katha. It appears from that Exhibit that it has got 12 feet wide road on its southern boundary. In the present case also, the Land Acquisition Officer fixed the market value of first Class land at Rs. 1,100/- per katha but deducted 20 per cent therefrom for construction of road and fixed the compensation money in respect thereof at the rate of Rs. 920/- per katha.

7. It has been submitted by the learned Counsel for the Appellants that this 20 per cent deduction was arbitrary and cannot be justified. But it appears from the above sale deeds filed on behalf of the awardees that the vendors thereof have provided roads from there own lands to the vendees to make them worth

habitable. In the present case a vast area of land has been acquired for construction of residential houses and, therefore, the entire area has to be subdivided into small blocks and each block has to be provided with approach road for proper communication. 20 per cent deduction for construction of these roads as has been done by the Land Acquisition Officer and which has also been accepted as justified by the learned Special Judge appears to be quite reasonable.

8. It has been very emphatically argued on behalf of the Appellants relying on the evidence of the Land Acquisition Officer O.W. 2 and Ext. C and Ext. C/1 the two rate report forms submitted by him that initially the Land Acquisition Officer has fixed the market value of Class-I lands at Rs. 1,300/- per katha but in the subsequent report it was brought down to Rs. 1,150/- per katha. It has been submitted by the learned Counsel for the Appellants that the State should have no objection in fixing the valuation of Class-I land at the rate of Rs. 1,300/ per katha as assessed by the Land Acquisition Officer initially. But it does appear from the two rate reports and the evidence of O.W. 2 that he initially fixed the valuation of Class-I land at the rate of Rs, 1,300/- per katha but he has fixed the compensation amount payable in respect thereof after deducting 20 per cent therefrom which, as discussed above is quite reasonable and justified for construction of roads to make them fit for construction of residential houses and buildings. On this calculation, the compensation payable, to the Appellants will be Rs. 1,040/- per katha. In the instant case, the Special Land Acquisition Officer has fixed the compensation payable at the rate of Rs. 1050/- per katha which is definitely more than the compensation which would have been payable on the basis of the first rate report of the Land Acquisition Officer O.W. 2. Hence, I see no reason as to why the Appellants should have any grievance against the compensation fixed by the Special Land Acquisition Judge.

9. Next it has been submitted by the learned Counsel for the Appellants that the Land Acquisition Officer has arbitrarily fixed the value of the wells and the houses situated on the lands and the learned Land Acquisition Judge has not given any compensation with regard thereto. But it appears from the evidence of O.W. 2 as well as from Ext. D that the value of the wells and houses were assessed by the Executive Engineer, Central Division, Patna and the valuation thereof was made by O.W. 2 on the basis thereof. Therefore, I find no substance in this submission made on behalf of the Appellants.

10. It has been submitted by the learned Counsel for the Appellants that the learned Land Acquisition Judge should have allowed some amount to the Appellants towards the trees standing on the land. Undisputedly, the land under acquisition was orchard land covered with trees and this being so, the market value of the orchard land will be determined inclusive of trees as a whole and not by valuing the trees separately from the land for the simple reason that the land wholly covered by trees cannot yield any usufruct independent of usufruct of the trees and without trees such a land may have a little value. The definition of the expression ''land'' in Section 3 of the Land Acquisition Act includes trees standing

 

thereon. I am fortified in this view by a Bench decision of this Court in Jute and Gunny Brokers Private Ltd. and Another Vs. The State of Bihar, .

11. Lastly it has been submitted by the learned Counsel for the Appellants that the learned court below ought to have taken into consideration the rate fixed by the Special Land Acquisition Judge, Patna in Land Acquisition Case Nos. 555 to 594 of 1961 by his judgment dated 31st August 1962 in respect of the orchard land situated in the same village and the judgment of this Court in an appeal therefrom passed on 9th February 1967 in Appeal No. 38 of 1963 which are Ext. H/a and Ext. H/b respectively. But it appears from the judgment of the court below of the Special Land Acquisition Judge that he found that the lands covered by these two judgments cannot be equated with the lands in question with regard to location, situation, advantages and potentialities thereof. It appears from the judgment Ext. H/a that the orchard land in these two cases consisted of mango orchard and date palm orchard only. In the present case it is not so. Hence, I find nothing wrong with the findings of the learned court below.

12. Thus, I find that no ground has been made out for interfering with the findings of the learned court below. It has been held by the Supreme Court in an appeal in a Land Acquisition Case in The Dollar Company, Madras Vs. Collector of Madras, , - "A court of appeal interferes not when the judgment under attack is not right but only when it is shown to be wrong". There appears nothing wrong in the judgment of the learned court below. Thus, I find no merit in these appeals.

13. In the result, all these appeals are dismissed and the impugned judgment passed by the learned court below is hereby confirmed. The parties will bear their own costs.