

(2005) 11 MP CK 0058

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No. 191 of 1996

Northern Coalfields Ltd.

APPELLANT

Vs

Sri Dadai (dead) through his L.Rs. Smt. Shobhi alias Subhav
and Another

RESPONDENT

Date of Decision : 08-11-2005

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 13, 14, 16, 17(2), 20

Citation : (2006) 1 MPHT 336 : (2006) 1 MPJR 408 : (2006) 1 MPLJ 352

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : P.S. Nair and Sushri Jasmeet Channa, for the Appellant; Kuldeep Singh, for the Respondent

Judgement

A.K. Shrivastava, J.

This appeal has been preferred u/s 20 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (for brevity "the Act") against the order/award dated 30-9-95 passed in Case No. 246/90 by the Tribunal, Sidhi constituted under the Act (hereinafter referred to as "the Tribunal").

The respondents are the legal representatives of original applicant, Dadai, who died during the pendency of this appeal. For convenience, hereinafter the applicant would mean deceased applicant Dadai.

The undisputed facts are that applicant was the owner of the disputed land. In public interest, the Government of India for the purpose of extraction of the coal acquired the disputed area on 15-11-1976 and fixed the amount of compensation to be paid.

The applicant submitted an application u/s 17(2) of the Act claiming Rs. 20,000/- per acre for compensation for the land in dispute which is 6.50 acres. There were 14 trees of Mahua on the disputed land and he claimed Rs. 1,000/- per tree. The

applicant submitted objections but the non-applicant, who is appellant in this appeal, did not give any notice nor paid any amount of compensation to him. Thereafter another land owned by the applicant admeasuring 6.50 acres, in which he was having dwelling house, was also acquired and the compensation of that part of the land was paid to him in the year 1982. However, the land in dispute which was acquired in the year 1976-77 admeasuring 6.50 acres consisting of 14 trees of Mahua, compensation of the land and the trees, has not yet been paid. Hence the application was submitted by the applicant u/s 14 of the Act praying therein that suitable amount of compensation of the land and the trees be awarded to him.

The appellant who was non-applicant before the Tribunal filed reply and submitted that the compensation to the tune of Rs. 5,395/- was assessed u/s 4 of the Act. A notice on 6-9-85 was sent to the applicant to receive the said amount, but, he did not appear and obtain the amount of compensation. According to the appellant, applicant never claimed compensation at the rate of Rs. 20,000/- per acre. The claim which the applicant submitted on 13-5-76 was at the rate of Rs. 2,000/- per acre and after assessing it, the appellant fixed the compensation at the rate of Rs. 870/- per acre. According to the appellant, they are ready to pay a sum of Rs. 5,395/-. It has also been put forth in the reply that disputed land was not consisting of any tree of Mahua. The applicant submitted claim in which he mentioned the trees of Tendu and for those trees, adequate compensation was assessed and fixed and which is included in the amount of compensation of Rs. 5,395/-.

On the basis of the pleadings of the parties, the Tribunal framed necessary issues and by the impugned award directed the respondent to make payment of compensation of Rs. 1,30,000/- to the applicant. The Tribunal further directed to pay solatium at the rate of 15% on Rs. 1,30,000/- apart from paying interest @ 5% per annum from the date of filing of the application, i.e., 20-11-1990. Hence this appeal.

In this appeal Shri P.S. Nair, learned Senior Counsel appearing for the appellant has submitted that the applicant submitted the application to make payment at the rate of Rs. 2,000/- per acre on 13-5-1976 and the Senior Revenue Officer, in order to make payment of compensation for acquiring land and other interests u/s 9 of the Act held that the applicant was entitled for compensation of Rs. 5,200/- for land and Rs. 195/- for the trees of Dhaura and Tendu. In total Rs. 5,395/- was assessed and this amount was directed to be paid to the applicant. The contention is that since the applicant himself submitted an application mentioning the cost of the land to be Rs. 2,000/- per acre, he is not entitled to claim Rs. 20,000/- per acre. Apart from this it has also been canvassed by the learned Senior Counsel that since there is no provision to pay any amount under the head of "solatium", therefore, the Tribunal constituted under the Act committed error by directing to make payment of solatium at the rate of 15%, to the applicant. In support of his contention learned Senior Counsel has placed

reliance on three decisions of the Supreme Court. They are Union of India and others Vs. Sher Singh and another, , Union of India (UOI) Vs. Hari Krishan Khosla (Dead) by Lrs., and The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another, .

Per contra, Shri Kuldeep Singh, learned Counsel appearing for the respondents submitted that the Tribunal after appreciating the evidence came to hold that the applicant is entitled for compensation and rightly passed the impugned award. According to the learned Counsel for the respondents, the impugned award is just and proper and no interference is required by this Court. It has been thus prayed that this appeal be dismissed.

After having heard the learned Counsel for the parties, I am of the view that this appeal deserves to be allowed in part.

The contention of learned Senior Counsel that applicant himself submitted the application for payment of compensation at the rate of Rs. 2,000/-per acre, sans substance. It be seen that the appellant, who was non-applicant before the Tribunal, did not examine any witness in order to rebut the evidence of applicant Dadai. The applicant examined himself and also examined one witness, namely, Baijnath. In his testimony the applicant specifically denied that he ever submitted any application to make payment of compensation at the rate of Rs. 2,000/- per acre. He also denied that earlier he made demand to make payment of compensation at the rate of Rs. 500/- per acre and later on made demand to make payment of compensation at the rate of Rs. 2,000/- per acre. The applicant examined one witness Baijnath (P.W. 2) who has stated that in Village Medhauli the rate of un-irrigated land is Rs. 20,000/- per acre. He himself sold the land by this rate on the year 1975. In cross-examination he has stated that the appellant also acquired his land in the year 1975 and paid him compensation at the rate of Rs. 6,170/- per acre. However, he submitted appropriate application in the Tribunal for grant of just compensation. The appellant did not examine any witness in the rebuttal. It appears that the appellant submitted a photocopy of the application filed by applicant Dadai to Managing Director of the appellant mentioning the cost of the land to be Rs. 2,000/- per acre. Nobody was examined on behalf of the appellant in order to prove the said application. On going through the said application it is gathered that the application bears thumb impression of some Brijlal and the same was filed on behalf of applicant Dadai. There is nothing on record who is this Brijlal and in what capacity he has submitted the application on behalf of the applicant. Thus it is very difficult to hold that the applicant submitted the said application to the appellant on 13-5-1976 stating therein the cost of the land to be Rs. 2,000/-per acre. Though in Para 10 of the award the Tribunal has stated that Brijlal is the brother of applicant Dadai but there is nothing on record of the Tribunal that Brijlal is the brother of Dadai. Even if it is held that Brijlal is the brother of the applicant there is nothing on record in order to show that he was authorized to submit the application on behalf of the applicant on 13-5-76 mentioning the cost of the land

to be Rs. 2,000/-.

There is specific statement of the applicant that the cost of the land in that area is Rs. 40,000/- per acre. The appellant did not adduce any evidence in the rebuttal. But in the application filed by the applicant u/s 17(2) of the Act he pleaded the rate to be Rs. 20,000/- per acre. His witness Baijnath (P.W. 2) also says that the cost of the land in the year 1975 was Rs. 20,000/-. Therefore, in absence of any evidence in rebuttal, as there is nothing on record otherwise to show that the cost of the land was not Rs. 20,000/- per acre in that area, I am of the view that the Tribunal rightly held the cost of land to be Rs. 20,000/- per acre. The finding of the Tribunal in deciding Issue Nos. 1 and 2 in that regard appears to be correct. Thus, I hold that the applicant is entitled to obtain compensation at the rate of Rs. 20,000/- per acre.

The next question for consideration is whether the Tribunal rightly passed the award of solatium and the interest. On going through various provisions of the Act and particularly Sections 13 and 14 which speak about compensation for prospecting licences ceasing to have effect, rights under mining leases and method of determining compensation since there is nothing in the Act to provide any sum of compensation under the head of "solatium", the view of this Court is that applicant is not entitled for the solatium. In the case of Sher Singh (supra) the Supreme Court while dealing the matter under Requisitioning and Acquisition of Immovable Property Act, 1952 held that since there is no provision under the said Act to pass an award under the head of "solatium", therefore, while determining the compensation under the said Act, no compensation under the head of solatium can be awarded. The same principle has been reiterated in the decision of Hari Krishan Khosla (supra), which is also a case under Requisitioning and Acquisition of Immovable Property Act. In the present case also since there is no provision to award any amount of compensation under the head of solatium under the Act, the applicant is not entitled for any solatium amount. I may also profitably rely the Division Bench decision of this Court in the case of Northern Coalfields Ltd., Singrauli Vs. Mata Prasad, , wherein this Court specifically held that there is no provision for awarding solatium under the Act. Thus in my opinion since there is no provision under the Act for awarding solatium, the Tribunal erred in law by directing the appellant to pay solatium at the rate of 15% on the amount of compensation. The decision of Mahadeva Shetty (supra) relied on by the learned Counsel is in regard to making payment under the Motor Vehicles Act and therefore the said decision is not applicable in the present case. However, there is no substance in the argument of learned Senior Counsel appearing for appellant that since there is no provision to award the interest, the Tribunal erred in law by awarding the interest @ 5% per annum. u/s 16 the Tribunal is empowered to award interest @ 5% per annum and the Tribunal has rightly passed the award of interest @ 5% per annum in that regard. Thus, that part of the award by which the Tribunal directed the appellant to pay solatium at the rate of 15% to the applicant is hereby set aside. The rest part of the award is hereby affirmed.

Ab judicatio, the appeal succeeds in part to the extent indicated hereinabove. Parties are directed to bear their own costs.