

(2017) 06 GAU CK 0021
In the Gauhati High Court
Case No : 9 of 2015

NORTHERN FRONT RAILWAY

APPELLANT

Vs

ZODINDANGA

RESPONDENT

Date of Decision : 16-06-2017

Acts Referred:

Land Acquisition Act, 1894, Section 4, Section 6, Section 18, Section 4(1), Section 23(2), Section 23(1A) - Publicati

Citation : (2017) 06 GAU CK 0021

Hon'ble Judges : M R Pathak

Bench : SINGLE BENCH

Advocate : Ali Hussain, L H Lianhrima, Lalmalsawmi, Samuel Vanlalhriata Chhangte

Final Decision : Allowed

Judgement

1.] Heard Mr. Ali Hussian, standing counsel, Northern Front Railway for the appellant. Also heard Mr. L.H. Lianhrima, learned senior counsel assisted by Ms. H. Lalmalsawmi, learned counsel for the Opposite Party No.1/Claimant/Petitioner. And Mr. Samuel Vanlalhriata Chhangte, learned Government Advocate for the Opposite Parties No. 2 & 3.

2.] The appellant NF Railway has preferred this appeal against the Judgment & Award dated 19.03.2014 passed by learned Additional District Judge (ADJ, in short), Aizawl Judicial District, Aizawl in Land Acquisition Case No. 10/2012 by which the learned reference Court directed the District Collector, Kolasib, Opposite Party No. 2 herein to reassess the value of the land covered by LSC No. 4/2005 that belongs to the Opposite Party No. 1 @ of Rs. 68/- per square foot for an area of 61,009 square feet within one month from the date of receipt of the said order and also directed N.F. Railway, the present appellant, to pay within a period of two months thereafter, the amount that the District Collector, Kolasib so arrived after such reassessment. By the said judgment and award dated

19.03.2014 learned Reference Court further directed the District Collector, Kolasib to pay solatium @ @ 30 % on the compensation show assessed as per Section 23 (2) of the Land Acquisition Act along with interest @ 12 % per annum from the date of Notification under Section 4 of the LA Act i.e. 2nd August, 2011 to the date of the Award/Approval of the Award dated 24.05.2012 as per Section 23(1-A) of the LA. Act, with the observation that the compensation amount that he had already received should be deducted at the time of making further payment to the Opposite Party No. 1.

3.] The brief facts of the case is that the State Government in the Land Revenue and Settlement Department vide Notification dated 02.08.2011, under Section 4 (1) of the Land Acquisition Act, 1894 as amended and Declaration dated 24.01.2012, under 6 of the said Act acquired land measuring 19,9954 Hectares at Bairabi Village Council area under Kolasib District of Mizoram for the public purpose, i.e. construction of railway line of N.F. Railway from Bairabi to Sairang.

4.] The District Collector and the District Commissioner, Kolasib made the Draft Award No. 1/2012 (Part-A Bairabi) by preparing acquisition compensation statement for the land, to be acquired for the aforesaid purpose at Bairabi Village Council area @ Rs. 25/- per sq.ft. for the land under LSC House Sites amounting to Rs. 5,15,07,964.

5.] The said Draft Award No. 1/2012 (Part-A Bairabi) was approved by the Government in the Land Revenue & Settlement Department on 24.05.2012. In the said acquisition proceeding, land of the Opposite Party No. 1 measuring about 61,009 sq.ft. covered by LSC No. 4/2005 was also acquired and for the same the petitioner was paid compensation of Rs. 17,09,425/- that includes total value of land (@ Rs. 25/- per sq.ft.) at Rs. 15,25,225/-, compensation for the fish pond (@ Rs. 56 per sq.mtr) at Rs. 84,000/- and value of crops amounting to Rs. 1,00,200/-. The Opposite Party No. 1 on 28.08.2012 submitted application under Section 18 of the L.A. Act before the District Collector cum Deputy Commissioner, Kolasib to refer the matter to the Court for adequate determination of acquisition compensation of his land involved in the case, seeking higher compensation @ Rs. 118/- per sq.ft. for the said land and also solatium @ 30% under Section 23 (2) of the LA Act over his said market value of land and interest @12% under Section 23(1-A) of the LA. Acts, which according to him were not considered in the acquisition compensation, awarded by the District Collector, Kolasib in the said Award No. 1/2011.

6.] The matter on being referred by the Collector Kolasib, the same was registered as LA Case No. 10/2012 before the Court of learned District Judge, Aizawl and the said LA Case was subsequently transferred by learned District Judge, Aizawl to the Court of the learned Additional District Judge, Aizawl for its disposal. The learned ADJ, Aizawl by its order dated 07.09.2012 impleaded the present Opposite Party No. 2, the present appellant, the present Opposite Party No. 3 and the Secretary to the Government of Mizoram, Disaster Management & Rehabilitation Department as respondents Nos. 1, 2, 3 and 4 respectively in the

said L.A Case No. 10/2012. The said LA Case was duly contested by the present appellant as well as Opposite Party 2. The learned reference Court by its order dated 17.05.2013 passed in said LA Case No. 10/2012 framed the following issues:- i) Whether the application is maintainable in its present form and style?

ii) Whether the applicant is entitled to payment of solatium and interest @ 30% and 12 % p.a. in terms of Sections 23 (2) & (1-A) of the La Act?

iii) Whether the market value of the land is liable to be enhanced as prayed for and if so, to what extent?

iv) Whether the applicant is entitled to enhance damages including future damages for the fish pond?

v) Whether the applicant is entitled to compensation as claimed for the crops and trees?

7.] The petitioner examined himself as the loan witness to substantiate his claim. In the said proceeding the petitioner exhibited (i) his reference application dated 28.08.2012 as Exhibit P-1,

(ii) Form B submitted by him with his reference petition stating his claim as Exhibit P-2,

(iii) copy of the Draft Award No. 6/2007 of the District Collector and Deputy Commissioner, Aizawl District, Aizawl with regard to acquisition of land for establishment of the BSF Composite Hospital within Durtlang Village Council area under Aizawl Sadar Sub-Division as Exhibit P-3,

(iv) an abstract from the Award No. 1/2006 where land value of House Site LSC fixed @ Rs. 800/- per sq.mtr. as Exhibit P-4,

(v) statement of claims made by the claimant/Opposite Party No.1 as Exhibit P-5,

(vi) photocopy of a communication dated 01.02.2007 issued by the District Collector Kolasib fixing market value of land under LSC No. W.12/1991 belonging to one Shri. Lalrinchhana @ Rs. 800/- per sq.mtr as Exhibit P-6,

(vii) copy of Notification dated 02.08.2011 under Section 4 of the LA Act issued by the Commissioner Secretary, Revenue Department, Government of Mizoram stating that stretch of land for the proposed Railway Line from Bairabi 0.575 - 42.241 Kms. within Kolasib District within an approximate area of 347.0374 Hectares likely to be needed for construction of Railway Line from Bairabi to Sairang as Exhibit P-7,

(viii) copy of the Notification (Declaration) dated 24.01.2012 under Section 6 of the LA Act issued by the Principal Secretary, Revenue Department, Govt. of Mizoram declaring that land notified vide Notification dated 02.08.2011 (Exhibit P-7) is required for construction of new Broad Gauge Railway line from Bairabi to Sairang as Exhibit P-8,

(ix) copy of the Draft Award No. 1/2012 (Part-A, Bairabi) made by the District Collector and Deputy Commissioner, Kolasib District, Kolasib determining the market value of the land @ Rs. 25/- per sq.ft. of LSC House-site as Exhibit P-9,

(x) list of land owners for said Award of Bairabi that includes the name of the claimant/opposite party No. 1 as Exhibit P-10 and

(xi) copy of the letter under number K.12011/25/2011-REV dated 24.05.2012 issued by the State Government in the Revenue Department approving the Draft Award No. 1/2012 (Part-A Bairabi) as Exhibit P-11. The claimant/opposite party No.1 examined himself as the lone witness to substantiate his claim, but was not cross examined.

8.] The claimant/opposite party No.1 before the learned Reference Court deposed that the total area of his land to be acquired is 5,760 sq.mtrs. and that his land is located within the residential area of Bairabi Sub-Town about 80 mtrs. away from the National Highway 154 with truckable access and that the Trade & Commerce Department of the State constructed its whole sale market in close vicinity of his land and that the said location enjoys the advantages of basic amenities like telephone, water supply and electrification etc. The said claimant/opposite party No. 1 stated that in the year 2006 there was acquisition of land within the residential area of Bairabi Sub-Town wherein the market value of the land was fixed @ Rs. 75.35/- per sq.ft./Rs. 800/- per sq.mtr. and that his land in question has lots of similarity with that of the land acquired in 2006 and since from the year 2006 as there was drastic increase in human beings and as the Government employees have already been paid 58% dearness allowances therefore, the market value of his land should be fixed @ Rs. 118/- per sq.ft., which according to him is reasonable. The said claimant/opposite party No. 1 further claimed payment of interest under Section 23 (1A) and solatium under Section 23 (2) of the LA Act. He also claimed Rs. 76/- per sq.mtr. for an area of 2542.75 sq.mtrs. for the damage caused to his fish pond, Rs. 120/- per kg for 650 kgs. of fish product for a period of 15 years towards loss of income from his said fish production and Rs. 1,00,200/- towards the damage caused to his crops and trees.

9.] The Reference Court after considering the Judgments of the Hon"ble Supreme Court in the cases of Chimanlal Hargovinddas -Vs- Special Land Acquisition Officer, 1988 3 SCC 751, Atma Singh -Vs- State of Haryana, 2008 2 SCC 568, Land Acquisition Officer, Revenue Divisional Officer -Vs- L. Kamalamma, 1998 2 SCC 385 and Chaturbhuj Pande -Vs- Collector, Rajgarh, 1969 AIR(SC) 255, the evidence placed by the said claimant/opposite party No. 1 through Exhibits P-1 to P-11 passed the impugned Order dated 19.03.2014 in said L.A. Case No. 10/2012.

10.] It is seen that as per the oral statement made by the claimant/opposite party No. 1 that his land involved in the case has the advantages, accessibility, potentiality, basic amenities such as electricity, telephone, water supply and that

located barely 80 mtrs. away from the National Highway 154 which can be accessed by truck, a Wholesale Market Building nearby, that was constructed by the Trade and Commerce Department of the State and that it is within the residential area of Bairabi Sub-Town, the learned Reference Court, finding that the statement of the claimant is not rebutted by the respondents, came to the presumption, that the land of the said claimant as alleged by him and the land acquired under Award No.1/2006 (Exhibit-P) are located within the residential area of Bairabi Sub-Town and even if there is no actual improvement in the infracture, it has the potential and possibility of improvement, as the claimant's land is located within the residential area of Bairabi Sub-Town and determined the market value of the land of the said claimant at Rs.68/- per sq.ft.

11.] It is a fact that the award of the Collector/Land Acquisition Officer is an executive act and an administrative offer to pay a definite sum, but when the award becomes subject of enquiry before the Reference Court, it becomes a judicial proceeding. Since the proceeding before the Collector/Land Acquisition Officer is not judicial, so the said officer, who makes the award, need not adhere to strict rules of evidence, but once the matter reaches the Court, the proceedings become strictly judicial and the rules of evidence have to be adhered to. It is settled that in a reference proceeding the claimant or interested person should be treated as a plaintiff and burden lies on him to prove that the compensation awarded by the Collector was inadequate. On reference under section 18 of the Land Acquisition Act for determination of compensation, burden lies on the claimant-plaintiff to prove proper, just and adequate compensation to the acquired land. In the case of Chimanlal Hargovinddas relied by the Reference Court in the impugned Judgment, Hon"ble Apex Court have held that "the Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it. The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court."

12.] It is settled that while ascertaining market value of land it has to be determined on the basis of the material is available on records. In the present case, except making statement by the claimant, neither adduced any evidence that his land and land under award No.1/2006 is same nor adduced any evidence that his land as well as land of said award No. 1/2006 are located within the residential area of Bairabi Sub-Town. From the records it is seen that Exhibit-P4, abstract from the Award No. 1/2006 where land value of House Site LSC fixed @ Rs. 800/- per sq.mtr., is only a type written photocopy, not authenticated by any authority. The claimant before the Reference Court did not adduce any evidence like electricity bill, water bill, telephone bill etc to establish that his land has such facility. He only made statement before the Court that his land involved in the case can be reached by truck and is 80 mtrs. away from National Highway, but did not adduce any independent evidence in that regard and so it is highly hazardous to rely upon oral evidence of the claimant himself to determine market value, in absence of any reliable independent evidence adduced by the

claimant.

13.] In the case of K. Posayya -Vs- Special Tahsildar, 1995 5 SCC 233, the Hon"ble Supreme Court have held that "Claimant stands in the position of plaintiff and the onus is on him to adduce necessary and relevant evidence in proof of the objection for higher compensation. The court is also enjoined to carefully scrutinise and analyse the evidence and applying the acid test of a prudent purchaser and a willing vendor or the realised income on the crops, the true, correct and fair market value should be arrived at."

14.] In the said case of K. Posayya , the Hon"ble Apex Court have also held that "Market value cannot be fixed with mathematical precision but must be based on sound discretion exercised by the reference court in arriving at a just and reasonable price. It should not be based on feats of imagination or flight of fancy. Determination of compensation for compulsory acquisition involves consideration of the price which a hypothetical willing purchaser can be expected to pay for the lands in the existing use as well as relatable potentialities. The acid test is the arm chair of the willing vendor would offer and a prudent willing buyer, taking all relevant prevailing conditions of the normal market, fertility of the land, location, suitability of the purpose for which it was purchased, its existing potentialities and likely use to which the land is capable of being put in the same condition would, offer to pay the price, as on the date of the notification. In case of acquisition of large tracts of lands for projects situated in several villages, stray sale deed of small extent here and there would not form the basis to determine the compensation. The reference court should be circumspect, pragmatic and careful in analysing the evidence and arriving at just and fair market value of the lands under acquisition which could be fetched on the date of the notification. The nature of the land, the crops raised and the nature of the income likely to be derived from the lands, the expenditure to be incurred for raising the crops and the net profits etc. would be the relevant factors in arriving at the net market value and if evidence is produced in that behalf on its basis applying the suitable 10 years" multiplier, the market value need to be determined. The owner or claimant should not be put to loss by undervaluation. But, at the same time public exchequer should not be put to undue burden by excess valuation. It is the statutory duty of the court to maintain the balance between diverse interests."

15.] It is interesting to note that, with regard to the claim of damages for his fish pond, the said Reference Court, by the impugned Judgment dated 19.03.2014 passed in L.A Case No. 10/2012 came to finding that the claimant/respondent No.1 is not absolved of his burden to substantiate his claim by cogent and reliable evidence so that probability factor leans in his favour and because of absence of any such reliable evidence denied him any such damages for his fish pond. From the records it is seen that none of the exhibits, Exhibits P-1 to P-11 placed by the claimant before the Reference Court can be relied upon and considered as cogent and reliable evidence for enhancement of market value of

the land involved in the case and without any such reliable evidence adduced by the said claimant/ respondent No. 1, the Reference Court by the impugned Judgment dated 19.03.2014 passed in L.A Case No. 10/2012 determined the market value of his land, covered by LSC No. 4/2005 for an area 61009 sq.ft., involved in the case @ Rs. 68/- per sq.ft., enhancing it from Rs. 25/- per sq.ft. as awarded by the District Collector, Kolasib in his Award No. 1/2012.

16.] From the above it can be seen that the learned Reference Court has absolutely failed to apply the requisite tests in determining the compensation.

17.] For the aforesaid reasons, the impugned Judgment and Award dated 19.03.2014 passed by learned Additional District Judge-III in L.A Case No. 10/2012 determining the market value of the land of the claimant/respondent covered by LSC No. 4/2005 @ Rs. 68/- per sq.ft. as well as the direction given in it, not being based on any evidence, is hereby set aside and quashed.

18.] The concerned Reference Court shall now consider the entire matter pertaining to L.A Case No. 10/2012 afresh enabling the parties to the said proceeding to lead fresh evidence, if so desires. The Reference Court shall issue fresh notice to the parties for their appearance in the matter. It is expected that the learned Reference Court shall complete the entire exercise within a period of 4 (four) months from today not later than 31.10.2017. The order dated 05.10.2015 passed in the I.A. No. 50/2015, with regard to stay of the Execution Case No. 26/2015 arising out of said L.A Case No. 10/2012 shall merge with this order.

19.] Registry shall return the LCR to the Court of District Judge, Aizawl Judicial District, Aizawl forthwith alongwith a copy of this order.

20.] With the aforesaid observation and direction, this appeal stands allowed.

21.] No order as to costs.