

(2011) 05 PAT CK 0048

In the Patna High Court

Case No : First Appeal Nos. 178 and 206 of 2005

NTPC Kahalgaon

APPELLANT

Vs

Smt. Subhadra Devi and Another
 Smt. Subhadra Devi
Vs The State of Bihar and Another

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

Citation : (2011) 05 PAT CK 0048

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—First Appeal No. 178 of 2005 has been filed by the claimant Subhadra Devi who is landholder (claiming enhancement of the compensation for her land which was acquired by the State of Bihar) against the judgment and award dated 26.2.2005 passed by Sri Kumar Prakash Sahai, the learned Land Acquisition Judge, Bhagalpur in L.A.R. Case No. 61 of 1998 whereby the Land Acquisition Judge has only partly allowed the claim of the Appellant by enhancing the prevalent market rate of the land from Rs. 397.59 paise to Rs. 825/- per decimal. The other First Appeal No. 206 of 2005 has been filed by the National Thermal Power Corporation against the same judgment and award challenging the enhancement of compensation from Rs. 397.59 paise to Rs. 825/- per decimal.

2. It appears that the State of Bihar acquired 1.09 acres of the land of the claimant Subhadra Devi for the purpose of construction of the National Thermal Power Station. Notification u/s 4 of the Land Acquisition Act was published on 18.5.1987. The claimant filed objection claiming compensation which was rejected by the Land Acquisition Officer and compensation of Rs. 49,577.88 paise was paid to her under protest. Then the claimant filed application u/s 18 of the Land Acquisition Act praying for reference to the court for enhancement of compensation.

3. Her case in short is that the acquired land had got potential value. It was highly productive, fertile and Bhit Class-I land. It was being irrigated from the

adjoining plot. The acquired land is very nearer to village Kushapur and is surrounded by several institutions like Sarvodaya High School, Middle School, Sobhnathpur Sanskrit High School, Kushapur Block Dispensary, Post Office and Panchayat Office which lie within the radius of half kilometer of acquired land. The claimant was getting vegetables, dalhan, telhan crops and was earning Rs. 15,000/- per year. No compensation for the standing crops has been paid by the State of Bihar. The claimant produced oral as well as documentary evidences but the learned Land Acquisition Officer did not consider the evidences and awarded a very meagre amount. The claimant claimed the value of the land at the rate of Rs. 5000/- per decimal and Rs. 15,000/- for the damage caused to the standing crops and also prayed for other statutory benefits. The said application was referred to the Civil Court.

4. On being noticed the National Thermal Power Corporation who was added subsequently as opposite party No. 2 filed objection to the claim of the application. Besides taking various ornamental pleas it was mainly contended that Rs. 55,902.91 paise was received by the claimants and not only Rs. 49,5777.88 paise. The Land Acquisition Officer has rightly rejected the claim of the claimant and awarded just and proper compensation to the claimant. The claim of the claimant is exaggerated and exorbitant. It is denied that the land is situated near to village Kushapur or is surrounded by several institutions. On the basis of these pleadings of the parties, the learned court below proceeded to decide the point as to whether the award and the compensation paid to the claimant was according to market value or not and whether the same is liable to be confirmed or to be modified? After considering the evidences, the Land Acquisition Judge by the impugned judgment and award determined the market value of the acquired land at the rate of Rs. 825/- per decimal. It may be mentioned here that the Land Acquisition Officer had determined the market value of the acquired land at Rs. 397.25 paise. Therefore, the Land Acquisition Judge enhanced the compensation from Rs. 397.39 paise to Rs. 825/- per decimal.

5. The learned Counsel for the claimant who is Appellant in First Appeal No. 178 of 2005 submitted that the learned court below should have determined the market rate of the land at Rs. 5000/- per decimal considering the fact that there were many institutions near the acquired land as claimed by the claimant. The witnesses examined on behalf of the claimant-Appellant have fully supported the claim of the claimant - Appellant about the valuation of the land but the learned court below has wrongly not relied upon those evidences and fixed the market rate at Rs. 825/- only per decimal instead of Rs. 5000/- per decimal. The learned Counsel further submitted that the Land Acquisition Judge should have allowed the compensation at the rate of Rs. 5000/- per decimal. The learned Counsel further submitted that overwhelming evidences were produced oral as well as documentary which clearly proves the fact that at the time of acquisition the market value of the acquired land was Rs. 5000/- per decimal and the claimant-Appellant is entitled for the compensation at the said rate. There was standing

crops when possession was taken and the Appellants have adduced evidences to the effect that the value of the standing crops damaged by the N.T.P.C. was Rs. 15,000/-. The Land Acquisition Judge has not granted anything with respect to the said crops. On these grounds, the learned Counsel submitted that the prevalent market rate of the acquired land may be fixed at Rs. 5000/- per decimal and the impugned judgment and award has to be modified accordingly.

6. On the other hand, Mr. Anil Kumar Sinha, the learned Counsel appearing on behalf of the N.T.P.C. who is Appellant in First Appeal No. 206 of 2005 submitted that the learned court below has wrongly enhanced the market value of the land from Rs. 397.59 to Rs. 825/- per decimal. The learned Counsel further submitted that the sale instances taken into consideration by the Land Acquisition Judge were not for the comparable lands. In those sale deeds small area of lands were involved, the nature of which was homestead land and, therefore, those sale deeds could not have been made basis for determining the market rate of the acquired land. In the present case, large chunk of land was acquired by the N.T.P.C., therefore, the price of small area cannot be equated to the price of large area and moreover, it appears that after proclamation for acquisition of the lands for N.T.P.C. the sale deeds have been created for the purpose of enhancement of compensation. The land Acquisition Officer after considering the pros and cons and every other aspect has rightly awarded just and proper compensation to the claimant-landholder determining the market value of the land at Rs. 397.59 paise. Therefore, the impugned judgment and award are liable to be set aside and the award prepared by the Land Acquisition Officer be restored.

7. The submission of the Appellant in First Appeal No. 178 of 2005 is the submission on behalf of the Respondent in First Appeal No. 206 of 2005 and likewise the submission of Mr. Anil Kumar Sinha, Advocate on behalf of the Appellant in First Appeal No. 206 of 2005 is the submission on behalf of the Respondent in First Appeal No. 178 of 2005.

8. In view of the above rival contentions of the parties, the point arises for consideration is, as to whether the claimant-landholder Appellant in First appeal No. 178 of 2005 is entitled for enhanced compensation @ Rs. 5000/- per decimal or whether the rate determined by the Land Acquisition Officer is just and proper or whether the rate determined by the Land Acquisition Judge is just and proper and whether the impugned judgment and award are sustainable in the eye of law?

9. The parties have adduced oral as well as documentary evidences in this case. Before going to the evidences it may be mentioned here that according to the claimants she is not satisfied by the market rate fixed by the Land Acquisition Judge by the impugned judgment and award. According to the land holder the Land Acquisition Judge should have fixed the market rate of Rs. 5000/- per decimal. On the contrary, according to the N.T.P.C. the market rate of the acquired land was properly fixed by the Land Acquisition Officer which was just and proper and therefore, the Land Acquisition Judge should not have enhanced

the rate of the acquired land by the impugned judgment and award.

10. PW 1 is the husband of the claimant. According to him the acquired land was Bhit Class-I land and was fit for homestead purpose. In the year 1987 the value of similar land was Rs. 12,000/- to 16,000/- per kattha and at such rate the lands were sold. He has also supported the allegation made in the claim application to the effect that in the vicinity of the acquired land there exist villages, schools, offices and institutions. The yearly income from the acquired land was Rs. 40,000/- per year. It may mentioned here that in the claim application it was stated that yearly income was Rs. 15,000/- where PW 1 has stated that yearly income was Rs. 40,000/-. This witness has further stated that the acquired land was irrigated from the adjacent plot. The nature of the land was different. According to him in the area 1 kattha is equal to a little less than 3 decimals. PW 2 has also stated that the land is Bhit Class-I land "homestead". In the west and north of the acquired land there is road. In 1987 the adjoining lands were sold at Rs. 1,00,000/- per acre. According to the claimant she is claiming Rs. 5,00,000/- per acre whereas according to this witness the lands were sold at Rs. 1,00,000/- per acre. Through Ext.1 she had purchased four kattha land for Rs. 18,000/- on 28.7.1986. According to this sale deed the rate of one acre comes to Rs. 1,50,000/-. The learned court below considered Ext.1 and found that the lands purchased by this witness is nearer to the village. PW 3 has also stated that he has purchased 15 kattha for Rs. 45,000/- and the acquired land was Bhit Class-I land and the rate was Rs. 2500/- per decimal. The sale deed of this witness has been marked as Ext.1/D. According to this sale deed the market rate comes to Rs. 1050/- per decimal. From Ext. G which is a map, it appears that the land of this sale deed is in the midst of the village. This is the finding of the learned court below also. Moreover, all these sale deeds and the evidences produced by the claimant are not consistent about the value of the land. Therefore, these evidences do not give clear picture so as to give a concluded finding regarding the prevalent market rate of the acquired land.

11. PW 4 has stated that the rate of the acquired land was Rs. 6000-7000/- per decimal, he had sold five decimal for Rs. 8000/- through Ext.1/C on 10.6.1985. According to this sale deed the rate of 1 decimal comes to Rs. 1600/-. From perusal of the sale deed it appears that there is a road in the north side. It appears that this plot also situated in the village itself and in the sale deeds itself it is described as homestead land.

12. PW 5 has stated that he had sold four hours of land through Ext.1/F for Rs. 3000/-. From Ext. G it is clear that this land is in the midst of the village and is a homestead land. PW 6 is the witness in the sale deed Ext.1/D and 1/E. The description of the lands in both these sale deeds are homestead vacant lands and in the middle of the village. The learned court below found that the acquired lands are at some distance from the village.

13. Ext. 1/A is the sale deed dated 23.9.1985 whereby 20 decimal of the lands of the said mauja was sold for Rs. 22,000/- and the land is agriculture land. On

calculation the value of the land comes to Rs. 1100/- per decimal. According to the evidences the acquired land are also agriculture land and the lands involved in Ext. 1/A the sale deed is also agricultural land. In my opinion, therefore, the nature of the land covered in the other sale deed as discussed above are homestead land and are in the middle of the village. Naturally, therefore, the price of those lands cannot be equated with lands acquired. The nature of the land acquired is different then the nature of the lands in this sale deeds. However, in the impugned judgment also the learned court below found that the nature of the land involved in Ext.1/A and the nature of the acquired land is similar.

14. Ext. F, the sale deed has been produced on behalf of the N.T.P.C. which is dated 17.2.1986. From perusal of the sale deed it appears that 14 decimal land was sold for Rs. 2400/- on calculation it comes to Rs. 178.50 paise per decimal. Therefore, now it becomes clear that the lands which are homestead and are in the middle of the village are more valuable and were sold in the higher rate for the purpose of homestead. Like wise the agricultural land which were nearer to the village is sold at higher rate than the agricultural land which are far away from the village. From Ext. G, the map of the village it is clear that the acquired land is surrounded by cultivable land and, therefore, the claim of the claimant that it is Bhit Class-I land is not accepted. Likewise the claim of the claimant that the nature of the land is homestead is also not acceptable.

15. From the discussions of the evidences oral as well as documentary it appears that the lands involved in the sale deeds are for very small area whereas the N.T.P.C. has acquired large chunk of lands. In State of Jammu & Kashmir Vs. Mohammad Mateen Wani and Others, the Apex Court has held that the sale instances relating to small parcel for land cannot be made basis for determination of compensation for big chunk of land acquired and the sale instances cannot be said to be comparable sale instances. Here in the present case considering the above facts and circumstances, the learned court below has reduced 25% from the rate of the land covered under Ext. 1/A.

16. In the case of Ahmedabad Municipal Corpn., etc. etc. Vs. Shardaben and others, etc. etc., the Apex Court held that burden is always on the claimant to prove by adducing reliable evidence to show that compensation offered by the Land Acquisition Officer is inadequate and the lands are capable of fetching higher market value. In the case of Hookiyar Singh and Ors. v. Special Land Acquisition officer Hookiyar Singh etc.etc. Vs. Special Land Acquisition Officer, Moradabad and another, the Apex Court held that the courts while determining compensation under the Land Acquisition Act must not indulge in feats of imagination but, sit in the armchair of a prudent purchaser and put a question to itself whether as a prudent purchaser it would offer the same price in the open market as is to be determined. Such is the view taken by the Apex Court in Gujarat Industrial Development Corpn. Vs. Narottambhai Morarbhai and Another, In G. Narayan Rao Vs. Land Acquisition Officer, the Apex Court held that it must

be established, as a fact, that the potential purpose does exist on the date of notification, the prevailing conditions in the market, the existence of the constructions of building activities in the neighbourhood and that other lands in the adjacent neighbourhood possessed similar conditions. From the above well settled principles of law laid down by the Apex Court it is clear that burden is always on the claimant to prove by adducing reliable evidences in support of the claim. From the discussions of the evidence above it appears that there is no consistency in the oral evidence. Moreover, in these type of cases market rate of the lands acquired cannot be fixed on the basis of oral evidences. The sale instances produced by the claimant covers small area of the land and the nature of the land is homestead land except the land covered under Ext.1/A. Therefore, the learned court below has rightly relied upon this Ext.1/A. Although the nature of the land involved in Ext.1/A appears to be same with that of the land acquired but the area covered in Ext. 1/A also is small area. In *The Land Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and Others*, and others the Apex Court has held that when no sale of comparable land are available where large chunks of land have been acquired even land transaction in respect to smaller extent of land could be taken note of as indicating the price that it may fetch in respect to large tracts of land by making appropriate deductions such as for development of land by providing enough space for road, sewage, drains expenses etc. It appears that considering these well settled principles of law the Land Acquisition Judge has deducted 25% from the value of land covered under Ext. 1/A. I find no reason to interfere with the finding of the learned court below. I therefore, find that the prevalent market rate fixed by the learned land Acquisition Judge in the impugned judgment and award is just and proper to which the claimant land holder are entitled to along with statutory benefits. I therefore, find no reason to interfere with the impugned judgment and award.

17. In the result, I find no merit in both the first appeals filed by the claimant as well as filed by the N.T.P.C. accordingly, both the first appeals are dismissed. In the facts and circumstances of the case, there shall be no orders as to costs.