

(2008) 02 OHC CK 0076

In the Orissa High Court

Case No : First Appeal No's. 282 of 1993 and 32 of 1994

Orissa Industrial Infrastructure Development Corporation and
Land Acquisition Collector

APPELLANT

Vs

Sri Gopal Krushna Goshala and Others

RESPONDENT

Date of Decision : 29-02-2008

Acts Referred:

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

Citation : (2008) CLT 281 Supp

Hon'ble Judges : Sanjupanda, J

Bench : Single Bench

Advocate : Asok Mukharjee, Addl., D. Mohanty, J.P. Choudhury, G. Mukharjee and P. Mukharjee, for the Appellant; A.K. Mohanty, R. Ch. Mohanty, R.K. Mohanty, A.K. Mohanty and N. Behuria Asok Mukharjee, D. Mohanty, J.P. Choudhury, G. Mukharjee, P. Mukharjee, D.K. Mohanty, R.C. Mohanty and R.K. Mohanty and Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Sanjupanda, J.—Since the award dated 13.9.1993 passed by the learned Subordinate Judge, 1st Court, Cuttack in Land Acquisition Case No. 8 of 1991 in a reference u/s 18 of the Land Acquisition Act (hereinafter referred to as the Act) is challenged in both the appeals, i.e. First Appeal No. 32 of 1994 filed by the Land Acquisition Collector, Cuttack, and First Appeal No. 282 of 1993 filed by the Orissa Industrial Infrastructure Development Corporation, Bhubaneswar, they were heard analogously and are being disposed by this common judgment.

2. The facts as narrated in the record are as follows:

Respondent in First Appeal No. 32 of 1994 is the owner of Ac. 2.950 decimals of land (Ac. 2.870 decimals of homestead land and Ac. 0.080 decimal of Khala land) appertaining to Plot No. 3610 under Khata No. 37 and Ac. 0.052 decimal of homestead land appertaining to Plot No. 3612 under Khata No. 364 in mouza Baharabisinabar in the district of Cuttack. The said lands were acquired by the

Appellant for Industrial Estate for which Notification u/s 4(1) of the Act was published in E.O.G. No. 410 dated 10.4.1980. The Land Acquisition Collector determined the value of the land at the rate of Rs. 1,25,000/-peracre in respect of homestead land and Rs. 50,000/- in respect of Khala lands. He also awarded compensation at Rs. 440/- for the standing trees and Rs. 55,453.50 as additional compensation on the market value. In total, the compensation was assessed at the rate of Rs. 4,25,143.50 ps. on 3.11.1983. The claimant received the said compensation amount on protest and filed his objection for higher compensation on the ground of advantages available in the locality where the land is situated and potency of the land for homestead. He further stated that the land is situated within the Cuttack Municipality area under the jurisdiction of Cuttack Development Authority. As the land is fit for industrial as well as commercial purpose and situated within the busy locality and the demand of the land has risen very high, the price of the land would be more than Rs. 10 lakhs per acre at the time of acquisition. In support of his claim for higher compensation, the claimant examined three witnesses and filed one sale deed which was marked as Ext. 1. The Land Acquisition Collector also examined one witness and filed a ground valuation prepared by the Land Acquisition Officer. Though Orissa Industrial Infrastructure Development Corporation was impleaded in the reference application as opposite party No. 2 and appeared in the referral Court, it did not contest the case at the time of hearing.

3. The referral Court, on analyzing the materials available on record, discarded the evidence of P.W.3 and observed that P.W.2 has no idea about the price of the land in the locality where the land in question had been acquired. P.W.1 is the previous Secretary of the claimant-Sri Gopal Krushna Goshala and his evidence is inconsistent and not reliable as he stated different rates and was confused about the actual rate of the land. The referral Court relying on the sale deed, Ext. 1 which is of the year 1979 wherein Ac. 0.08 decimals of land was sold at Rs. 4,000/-, determined the market value of the acquired land at Rs. 5 lakhs per acre.

4. Being aggrieved by the said award, the Land Acquisition Collector, Cuttack as well as the Orissa Industrial Infrastructure Development Corporation has filed these two appeals separately.

5. Mr. S. Mohanty, learned Addl. Standing Counsel, appearing for the Land Acquisition Collector (Appellant in FA No. 32/1994), submitted that the referral Court has in fact accepted the price reflected in the sale deed which was in respect of a small patch of land. Since the acquisition made related to a big patch of land, the referral Court should have made a deduction in the price while determining the market value of the acquired land.

6. Mr. A. Mukharjee, learned Senior Counsel appearing on behalf of the Orissa Industrial Infrastructure Development Corporation (Appellant in FA No. 282/1993), submitted that since no reliable evidence was adduced by the claimant and Ext. 1 was a sale deed of the year 1979 and the claimant had

suppressed that the said land was purchased by it in order to get a passage to its own land, the same was hit by suppressio veri and the referral Court have rejected that document and confirmed the award passed by the Land Acquisition Collector. He further submitted that in the case of Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another, the Apex Court has decided that how to determine the market value of the land when a sale deed in respect of small patch of land was available. The referral Court has not followed the same. Therefore, the interference of this Court is warranted.

7. Mr. Mohanty, learned Counsel for the Respondent-claimant, on the other hand, submitted that the award passed by the referral Court is just and reasonable, since during the year of acquisition the value of the land in the locality was rising very high and the Court has considered the potency of the land and determined the compensation. There is no merit in the appeals which need to be rejected.

8. This Court, after considering the rival submissions of the parties and going through the materials available on record, finds that though two types of land had been acquired, the referral Court has determined the price as if all the lands are of similar type. Though learned Counsel for the claimant submitted that the claimant had developed the Khala type of land, he has not proved the said fact in accordance with law. When a large tract of land is acquired, the transaction in respect of a small property does not offer a proper guideline. Hence, such a transaction should not be taken as a real basis for determining the compensation in respect of large tract of property. While determining the market value of a large property on the basis of a sale transaction of a smaller property, a deduction should be made. The area in question where the acquired land is situated is industrially developed. The claimant has purchased the land under Ext. 1 for passage to his land and he has not disclosed the said facts. In Law Lexicon, the word suppression very means "withholding of information". Thus, suppression of truth is equivalent to suggestion of falsehood. The suppression or failure to disclose what one party is bound to disclose to Anr. , may amount to fraud. Since Ext. 1, the sale deed, is hit by the aforesaid principle, the same is discarded by this Court.

9. This Court, in the case of Land Acquisition Collector v. Smt. Harapriya Kaur reported in 2005 (I) CLR 10, after analyzing the evidence and the surrounding facts and circumstances of the case has determined the market value of the acquired land at Rs. 2,00,000/- per acre at the relevant point of time. The market value is ordinarily the price the property may fetch in the open market if sold by a willing seller. The amount of compensation cannot be ascertained with mathematical accuracy. Having regard to the entire facts and circumstances of the case and keeping in view the decision of the Apex Court in the case of Smt. Kausalya Devi Bogra (supra) and considering the potency of the land, this Court determines the market value of the acquired land at Rs. 2,50,000/- (Rupees two lakhs fifty thousand) per acre in respect of the homestead land.

10. So far as Khala land is concerned, this Court determines the market value of

the said land at Rs. 75,000/- (Rupees seventy five thousand) per acre. The claimant-Respondent is also entitled to statutory benefits granted by the Court below.

11. With the aforesaid modification both the First Appeals are disposed of.

There shall be no order as to costs.