
(2010) 05 JH CK 0105

In the Jharkhand High Court

Case No : First Appeal (S.J.) No. 730 Of 1972

Parmeshwari Devi Ghutghutia Chiranji Lal Agarwalla

APPELLANT

Vs

State Of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Land Acquisition Act, 1984 — Section 2, 4, 23(1)(A)

Citation : AIR 2010 4 Jhar R 310 : (2010) 4 JLJR 592

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

1. Heard the learned counsel for the appellants and counsel for the State.
2. The first appeal is directed against the judgment and award dated 30-3-1972 passed by Sri H.D. Banerjee, Land Acquisition Judge (Subordinate Judge-2nd), Dhanbad in Land Acquisition Reference Case No. 85 of 1969 arising out of Land Acquisition Case No. 9 of 1961.
3. It is submitted by learned counsel for the appellants that the Land Acquisition Judge wrongly fixed the rate of the land acquired at Rs. 14,000/- per acre ignoring the sale deeds filed i.e. Ext. 1 series for similar land of the area sold in the year 1961 at Rs. 89,353/- per acre.
4. Learned counsel for the appellants relied in a decision reported in 1986 PLJR 737, wherein it was held that sale deed of similarly situated land in the same area may be used for the determination of the market value of the land acquired. It has also been submitted by learned counsel for the appellants that the Land Acquisition Judge should have allowed a solatium @ 30% of the market value in view of the provision of Section 2 of the act

as amended by the Land Acquisition Act, 1984. He also claimed that the interest @ 6% is also low.

5. On the other hand, learned counsel for the State has opposed the same and submitted that the Land Acquisition Judge has rightly granted solatium

@ 15%, since the amendment was not applicable to the appellants, since, the acquisitions were made before the amendment came into force in 1984

and the appeal was also filed in 1972 claiming 15% of solatium. The learned Land Acquisition Judge has considered the market value and Ext. C,

which considered 15 sale deeds and fixed the average rate of Class A land in the area at the rate of Rs. 14,000/- per acre was accepted, and hence,

no interference is required by this Court.

6. After hearing both the parties and after going through the evidences on record, it appears that 42 land acquisition references were made to the

learned Sub-Judge 2nd, Dhanbad arising out of Land Acquisition Case No. 9 of 1961, by which the lands were acquired for extension of Indian School

of Mines and Applied Geology in village Dhaya and Hirapur. Notification under Section 4 of the Land Acquisition Act was published on 12-5-1961 and

in all the cases awards were made. As per the award, the land acquired belong to the appellant and the award was given at the rate of Rs. 7140/-

total @ Rs. 140/-. The lands were divided into two categories:

Class A land and Class B land. However, it appears that in reference, the learned Land Acquisition Judge kept the land of the appellant in Class A

category.

7. From the record, it appears that although, the sale deeds (Ext. 1 series) were filed in the trial Court, but they are not available in the lower Court

record and it appears that they have been withdrawn by the different parties who had filed the same. However, the appellants have filed one sale

deed (Ext. E) which has been registered by them, wherein 1 katha 5 chhataks 30 sq. ft. of land was sold in the said locality for Rs. 2,000/-.

8. It also appears that the learned trial Court, after considering Ext. 1 series to be not reliable, shows the land of the locality at the rate of Rs. 60,000/-

to Rs. 89,000/- per acre and most of the kebalas (sale deeds) were in favour of relations after the vendees come to know that these lands are going to

be acquired. The Court has also found that all the kebalas (sale deeds) cannot be discarded on that ground. Hence, the trial Court relied on Ext. C,

which considered 15 kebalas (sale deeds) on the same area and fixed the price of lands of Class A at Rs. 14,000/- per acre, which was allowed by the

trial Court. However, since the trial Court himself has stated that all the kebalas of Ext. 1 series cannot be discarded and he could have discussed the

same: If the kebalas relied upon by the appellant were showing exaggerated value of the land, he should have given a finding on the basis of some of

the reliable kebalas, but since the kebalas are not available on the record, it is difficult to consider the same.

9. However, in my opinion, the value of Class A land at the rate of Rs. 14,000/- per acre in the area where the Indian School of Mines is situated in

Dhanbad, seems to be too low. Accordingly, the same is fixed at Rs. 25,000/- per acre. In my opinion, the claim of the appellants to get solatium @

30% as per the amended Section 23(1)(A) cannot be given to him, since the amendment came into force in 1984, and as such, the Land Acquisition

Judge has rightly granted him the solatium at the rate of 15% as added compensation.

10. The rate of interest, however, fixed by the trial Court at the rate of 6% is also raised to 9% per annum from the date of award till realization.

11. Accordingly, with the aforesaid amendment in the judgment of the trial Court, both the appeal are allowed in part and the judgment and decree

passed by the trial Court is amended accordingly.

12. Appeal partly allowed.