

(1981) 05 GAU CK 0005
In the Gauhati High Court
Case No : First Appeal No. 54 of 1970

Rabindradhar Barua and Others

APPELLANT

Vs

Collector of Kamrup

RESPONDENT

Date of Decision : 22-05-1981

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Citation : AIR 1982 Guw 17

Hon'ble Judges : S.M. Ali, J; K.N. Saikia, J

Bench : Division Bench

Advocate : S.N. Medhi, for the Appellant; D.N. Konwar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Saikia, J.—This land acquisition first appeal is from the reference Court judgment in Misc. Case No. 27 of 1966 arising out of L. A. Case No. 24 of 1959.

2. The appellants' inherited land measuring 75B 3K 15L under Dag Nos. 208, 210, 212, 213 and 214 covered by K. P. Patta No. 54 of Noonmati village. Panbari Mouza, Gauhati was acquired for construction of the Railway Marshalling Yard (Project No. IIB) in L. A. Case No, 24 of 1959 wherein the notification u/s 4(1) of the Land Acquisition Act, hereinafter referred to as "The Act", bearing No. RLA.4/60/59, was issued on 8-10-1961 and the declaration u/s 6 of the Act, bearing No. RLA. 4/60/60, was issued on 8-10-1961. The possession of the land was taken on 4-2-1960 even prior to the Notification. The Collector classified thereout 14B. 2K. OL. as homestead and 1B. 1K. 15L. as cultivable land. There were four standing houses and huts and a large number of standing trees, as shown in Ext. 1, and 9 tanks, some with fish, and a barbed wire fencing around.

3. The Collector in his award dated 5-5-64 gave @ Rs. 12,000/- per bigha of homestead land and @ Rs. 10,000/- per bigha of cultivable land, the total for land being Rs. 1,86,300/-. He also awarded for the trees land crops Rupees

11.652.87 p. and Rs. 5,540.30 p. for the houses and huts Rs. 5,994.00 and Rupees 2.520.37. and solatium @ 150% amounting RS. 31,423.08 p; the total compensation allowed thus being Rs. 2,43.430.62 p.

4. The reference made u/s 18 of the Act dt. 26-6-64 was registered as Misc. Case No. 27 of 1966 wherein the appellants claimed compensation for the land @ Rs. 35,000/- per bigha. for the house and trees Rs. 1,50,000/-. For the tanks and fish Rs. 1,50,000/- and for loss of prospective income Rs. 1,00,000/~. The reference Court by its judgment dt. 18-3-70 rejected the classification into homestead and cultivable land and enhanced the compensation for the land uniformly to Rs. 15,000/- per bigha and for the tanks to Rs. 9,000/- and refused to enhance on the other heads. Hence this first appeal.

5. The appellants herein claim @ Rs. 24,200/- per bigha for land Rupees 1,15,000/- for the trees, and Rs. 27,000/- for nine tanks. This means they claim additional Rs. 1,44,900/- for the land. Rs. 100,000/- for the trees and Rupees 14,000/- for the tanks.

6. Mr. S.N. Medhi, the named counsel for the appellants, submits that the reference court did not take into consideration the relevant exhibits and the potential value of the land and did not properly ascertain its market value. It also did not adequately compensate for the the fruit bearing trees. Mr. D. N. Konwar. learned counsel for the Collector, counters submitting that the reference Court committed no error, and correctly assessed the compensation both for the land and for the trees according to accepted principles.

7. Mr. Medhi draws our attention to the justification report (Ext. C) for project II-B wherein it is stated. "This project covers an area of 51B. 3K. 0L. of land in Village Noonmati in Mouza , Panbari, the lands are mostly high lands lying by the Southern side of the Noonmati road, about a furlong east of the Industrial Estate. They contain a valuable orchard belonging to Rabin Barua and brothers and other homesteads be-longing to different persons. A Marwari gentleman had started construction of a flour mill, but stopped from completing it in view of the projected acquisition of the land for the marshalling yard. On the north and east of the block, practically all lands have been acquired for the Refinery, the main site of which is located about a mile to the east".

8. Before the reference Court Exts, 15. 16 and 17 were filed. Ext. 15 is a sale deed dated 11-9-1962 of one bigha of land at village Noonmati for Rs. 24,000/-. Ext. 16 is also a sale deed of 3 kathas of land at Village Bamunimaidan for Rs. 12,000/- on 5-5-1958 (Rs. 20,000/- per bigha). By Ext. 17 3 Kathas of land at village Bamunimaidan was sold on 18-1-1961 at Rs. 19,000/-(Rs. 31,866/- per bigha). Ext 15 has been discarded by the reference court as it was about a year subsequent to the notification (8-10-1961). Exts. 16 and 17 were discarded holding that the lands were near Gauhati and far away in Bamunimaidan beyond Noonmati village.

9. P. W. 2, Shri Ghana Kanta Deka, Gaonbura of Noonmati Village, deposed that

the garden meaning the acquired land was by the side of the Gauhati-Sonapur road and that the New Gauhati Station was established over the garden land and that Bamunimaidan goan and Noonmati gaon were contiguous to each other. City Bus communication started to Noonmati from 1958 and that the place was well developed due to the establishment of the Industrial Estate and the Refinery. He further deposed (on 6-1-1968) that the land of this area was sold at Rs. 3,000/- to Rs. 4,000/- per bigha in 1958/1959 and then the value of land rose to Rs. 6,000/- or Rs. 7,000/- per Katha. This works out at Rs. 30,000 or Rs. 35,000 per bigha. P. W. 3 also said that the Refinery and the Industrial Estate were established in that area before the land was acquired and that workshops, mills, and industries were established there. P. W. 4, the Revenue Kanango, also deposed that the acquisitioned land was within two furlongs of the Industrial Estate and that the other industries were also established there. P. W. 7, Dharendra Nath Barua, deposed that Ext. 15 land was very near to the acquired land and that Bamunimaidan and Noonmati were adjacent villages. Ext. 16 land was low lying land and about 5 furlongs away from his land.

10. From the above evidence certain facts emerge, namely, that Noonmati and Bamunimaidan are adjacent villages and that the acquired land is situated near the Refinery, the Industrial Estate and the Railway Station as well as other industrial establishments. The land is by the side of the Noonmati road. It is also clear from the sketch map that Dag No. 210 partly, while Dag No. 213 fully abuts the Gauhati-Sonapur road, and between that road and Dag No. 212 there is only a small strip (Dag No. 211). All the dags are situated between the Gauhati-Sonapur road on the north and the Railway line on the south.

11. Two judgments, namely, Exts. 14 and 18, have been filed, in the reference court. Ext. 14 is a reference Court Judgment dt. 30-6-67 relating to land of 1B. 1K. 2L. of K.P. Patta No. 13 of Dag No. 207 which was acquired by the same notification dt. 8-10-61 for the same project and compensation given was Rs. 15,000/- per bigha by the Reference Court, while the Collector awarded Rs. 10,000/- per bigha. Dag No. 207 is an interior dag. sandwiched between dag Nos. 205 and 206 on its north and dag No. 414 on its south. Thus the land of dag No. 207 may be somewhat less valuable than the dags Nos, 210, 212 and 213 which abut the Gauhati-Sonapur road. In Ext. 14 the Reference Court observed that the market value per bigha was about Rs. 16,000/- but it awarded @ Rs 15,000/- per bigha.

12. Mr. Medhi submits that the potential value was not considered in this case by the Reference Court. It is correct that by discarding altogether Exts. 15, 16 and 17 and not relying upon Exts. 14 to the desired extent the Reference Court does not appear to have expressly considered the potential value. Ever since the Privy Council observed in *Atmaram Bhagwant Ghadge v. Collector* AIR 1929 PC 92 that an Owner of land is entitled to the value to himself of the property in its actual condition at the time of expropriation of all its then existing advantages and with all its future possibilities, excluding only any advantages due to the carrying out

of the scheme for the purposes for which the property was being acquired, and in AIR 1939 98 (Privy Council) that the compensation must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser and that in case of land its value in general can be measured by a consideration of the prices that have been obtained in the past for land of similar quality and in similar position and this is what must be meant in general by market value, their Lordships of the Supreme Court have been emphasising this aspect. In the *The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty*, it was observed that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land on the date of notification u/s 4(1) and that the method of valuation may be (i) opinion of experts, (ii) the price paid within a reasonable time in bona fide transaction of purchase of the lands acquired or the lands adjacent to the land acquired and possessing similar advantages; and (iii) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. In *Smt. Tribeni Devi and Others Vs. Collector of Ranchi*, it was held that the land acquired has to be valued not only with reference to its condition at the time of the declaration u/s 4 of the Act but its potential value also must be taken into account. The sale deeds of the lands situated in the vicinity and the comparable benefits and advantages which they have furnish a rough and ready method of computing the market value. The High Court therein, however, was held not to have been justified in giving 10 per cent towards potential value because that element was inherent in the fixation of the market value of the land and could not be assessed separately.

13. In *Adusumilli Gopalakrishna Vs. Special Deputy Collector (Land Acquisition)*, it was ruled that an assessment of the compensation payable for land acquired must take into account several factors, including the nature of the land, its present use and its capacity for a higher potential, its precise location in relation to adjoining land, the use to which neighbouring land has been put and the impact of such use on the land acquired and so on.

14. In *Deep Chand and Another Vs. State of Uttar Pradesh and Another*, a vast area of agricultural land lying within the Municipal limits of Muzaffarpur town was acquired for the purpose of Housing Co-operative Society in 1948 and the Collector awarded compensation at the rate of 2 annas per square yard of land which was increased to 6 annas per sq. yard by the District Judge in a reference. The Supreme Court observed that from the transactions of sale produced as exhibits in the case it would be seen that the price of the land in the locality was doubled in the course of three years near about the time the notification u/s 4 had been issued. The High Court was not right in completely brushing aside a sale of 5 bighas of land containing a mango grove and lying to the east of the Railway line at Rs. 7/- per square yard. Their Lordships accordingly fixed the market value at Rs. 2/6/- per square yard.

15. Considering in the light of the above principles the Reference court may not

have been justified in discarding Exts. 15. 16 and 17 altogether, the distances of time and place being not unreasonable and the villages Noonmati and Bamunirnaidan being included in the same locality or vicinity. It may be observed that the relevant considerations are whether the two lands were situated in the same locality, one in vicinity of the other, and whether the distances of time between the two transactions were reasonable. The locality or vicinity is not always measurable in terms of feet or furlongs; and the reasonable time is not always measurable in terms of days or months. As was observed in *Mrs. Khorshed Shapoor Chenai and Others Vs. Assistant Controller of Estate Duty, Andhra Pradesh and Others*, upon acquisition of his lands the claimant has only one rights, which is, to receive compensation of the lands at their market value on the date of the relevant notification and it is this right which is quantified by the Collector as well as the Civil Court. It is the duty of a Court to give the owner as nearly as possible the market value and failure to do so would result in unjust enrichment of the acquirer on the one hand and unjust deprivation of the owner on the other, which would be unethical and illegal at the same time. Considering the facts and circumstances of the case, including the imponderables, we would fix the compensation for land at Rs. 16,000/- per bigha in this case.

16. Mr. Medhi forcefully argues that the valuation of the trees have been grossly inadequate. The list of trees . (Ext. 1) was prepared by the Kanango himself, and was examined in presence of the Railway Officer who signed it There were 212 Nos. of fruit bearing betel nut trees, and more than one thousand betel nut trees ready to bear fruit. Besides these many betel nut plants were being grown which were not recorded. That witness deposed that the garden was well maintained. There was, according to P. W. 1, also an approved list of compensation for trees for the District of Kamrup (Ext. 2) valid till 31-1-69. That list was also not considered.

17. P. W. 4 deposed that he had also betel nut trees in his house and that one betel nut tree gives three bunches of nuts a year and one bunch contained about 2/3 "pons" (One pon contain 80 nuts). According to him price of betel nuts per pon used to be approximately Re. 1 or 1.50 in 1959/60 but became very high later. One betel-nut tree yielded fruits for many years, he deposed.

18. The reference court viewed Ext. 2 with suspicion. In it value of big betel nut trees is stated to have been fixed at Rs. 60/- per tree and so also a big coconut tree at Rs. 60/-. This the learn-; ed court considered to be absurd as according to it the coconut trees ought to have been valued at a higher price. The Collector awarded Rs. 11,652.87 p. for the trees and the reference court found no basis or material for enhancing the same. The basis of the valuation, however, is not clear. There were, as already stated, 212 fruit bearing and more than one thousand ready for fruit bearing betel nut trees, besides many plants. These 1212 trees would have yielded for many years. Even at 1958/59 price one tree would yield minimum Rs. 3/- per year and at that rate the total annual yield would be Rs. 3,036/-. A conservative estimate of fruit bearing period of a betel

nut tree could safely be taken as 20 years.

19. In *Shunmuga Velayuda Mudaliar and Others Vs. Collector of Tanjore*, it was observed that in case of coconut topes, it was reasonable basis for fixing the market value to calculate ten years' purchase on the average income of the yielding trees plus the value of the timber of the non-yielding trees. It was also pointed that the land acquired under the Act should not be valued as a building site and at the same time valued upon the footing of the produce of fruit of the trees remaining there.

20. The above principles were followed in *The State of Madras Vs. Alameluthayammal and Others*, where it was observed that if a certain land had been valued as an agricultural land, it was reasonable to ascertain the capitalised income of the fruit bearing trees in which case the period for computation of value should be taken as only ten years. But if the site is valued as a house site, the trees standing thereon cannot be valued on the basis that it is fruit-yielding tree and at best the value of the tree as timber or fuel alone can be taken into account. Otherwise, the valuation will really result in duplication of values.

21. In *The State of Madras Vs. Rev. Brother Joseph*, where the area acquired comprised 3 topes of coconut and oranges and the method adopted by the L. A. O. and the reference Court for valuing was to capitalize the net income at 20 years purchase and the High Court held that the capitalisation of the net income of the 20 years was the fair method for arriving at their market value, their Lordships of the Supreme Court observed that there was no discussion in the judgment of the principle on the basis of which such a method of calculation was adopted, and referred to *Kompalli Nageswara Rao and Others Vs. Special Deputy Collector, Land Acquisition, Bapatla*, *Kampalli Nageshwara Rao v. Special Deputy Collector*, where the Court approved the method for valuing orchards by capitalizing their net income at the number of years' purchase, which had to be fixed with reference to the nature of the trees and other circumstances and capitalised the net income at 15 years' purchase for finding out the market value of the coconut garden and the orange orchard. The reference Court and the High Court were held to be correct in capitalizing the net income of those topes at 20 years' purchase to find out their market value. Their Lordships did not think that the capitalization of the net yield was not a fair method to arrive at the market value of those topes and that the method was not in any way unreasonable.

22. In the instant case we have applied the principle of potential value of the acquired land as homestead land. If we apply the principle of expected recurring yield from the trees, the question arises whether it will amount to giving double benefit to the owner --once as homestead land and then as ground for fruit yielding trees. In *Deep Chand and Another Vs. State of Uttar Pradesh and Another*, the Supreme Court held that the High Court was not right in completely brushing aside the sale deed dt. 11-3-1948, Ext. Q by which about 5 bighas of land was sold approximately @ Rs. 7/- per sq. yard. This implies that agricultural land containing mango grove could be treated alike with agricultural land lying

within the Municipal limits acquired for the purpose of Housing Co-operative Society. In the instant case the land has been acquired for construction of the Railway Marshalling Yard and, as such, though hitherto agricultural land containing fruit bearing trees it would be proper to evaluate it like other neighbouring land used as homestead land. The unearned increment in land value is the result of environmental factors while the fruit bearing trees had to be planted and nourished investing capital and labour. This garden having been a running commercial proposition and the fruit trees with recurring expected annual yield having been planted and yielded fruit, it may not be proper to deprive the owner of the expected yield simply on the ground that the land itself has been valued as homestead land. It is in evidence that the betel nut trees yielded fruit for many years and capitalization of 20 years yield for each betel nut tree would not be unreasonable. It is admitted that the orchard was well maintained and valuable. Ext. 2 was the approved list which was prepared by the Government. In that list for betel nut trees value was fixed at Rs. 60/-each. Calculated 20 years' yield in the instant case also is Rs. 60/-. Considering the fact that the land has been valued as homestead and some cost of maintenance would be there, it would be reasonable to allow compensation at Rs. 50/-per betel nut tree. As one thousand of the trees were only ready to bear fruit, we fix the total compensation at Rs. 50,000/ (Rupees fifty thousand on this head.

23. As regards interest, the reference Court awarded at the rate of six per cent per annum from the date of Collector's award. It is in evidence that possession of the land was taken on 4-2-1960. So interest shall be due and paid at the rate of six per cent per annum from the date of taking over possession to the date of award, and at the same rate on the enhanced compensation till the date of payment, less what has already been paid on this account.

24. We do not find sufficient reckonable materials to interfere with the amounts of compensation awarded on the other heads.

25. In the result, the appeal is accordingly allowed, but without costs.

I agree.