

(2024) 03 JH CK 0041
In the Jharkhand High Court
Case No : First Appeal No. 39 Of 2016

Raj Kumar And Others

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 20-03-2024

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 9, 12(2)

Citation : (2024) 03 JH CK 0041

Hon'ble Judges : Pradeep Kumar Srivastava, J

Bench : Single Bench

Advocate : Ramawatar Choubey, Rajeev Kumar Shekhar, Praveen Kumar Akhouri, Diva Kant Roy, Ravi Prakash

Final Decision : Disposed Of

Judgement

Pradeep Kumar Srivastava, J

1. The present appeal is directed against the judgment dated 08.12.2015 and award dated 18.12.2015 passed by in L.R. Case No. 07 of 2007 by the learned District Judge-IV, Hazaribagh arising out of L.A. Case No. 03/2003-04 with respect of Village ? Kud 1, Thana No. 143, District - Hazaribagh.

2. The factual matrix of the case is that for construction of Koderma-Ranchi vide Hazaribagh-Barkakana rail line, a notice under Section 9 of the Land Acquisition Act, was issued to the original appellant namely, Nagia Devi (Since deceased) for acquisition of land measuring 0.71 decimals in Plot NO. 189 of Khata No. 9, situated at Village ? Kud J, District ? Hazaribagh.

3. It is alleged that out of 0.71 decimals only 0.50 decimals land was acquired by the Government and a notice to this effect under Section 12(2) of the L.A. Act, 1894 was issued for the payment of compensation.

4. The declaration for construction of the said project dated 27.04.2004 was published in District Gazette No. 17 dated 23.07.2004. The quantum of

compensation determined by the State was alleged to be insufficient, inadequate and very much low as per existing market value of the land in the vicinity on the date of last publication / notification under Section 4(1) of the Act. It was alleged that the land acquired is situated just adjacent to the NH-100, which is known as Hazaribagh-Chatra Road. The land of the petitioner which is adjacent to Plot No. 189 was also acquired at a higher rate. Ward No. 18 of Hazaribagh Municipality is also situated in nearby Mohalla Khirgaon, Hazaribagh where basic infrastructures are available. Therefore, the land had a high potential value in the area, which must be adequately compensated in terms of money.

5. It appears that the Land Acquisition Officer had determined the value of the acquired land on the basis of average market rate of the land for the similar land in the locality prevalent at the relevant point of time. The land is also situated in the isolated area and same has no potential value. Accordingly, the award was prepared for the acquired land of 50 decimals in favour of Nagia Devi (Original Petitioner) (since deceased) in respect of compensation to the tune of Rs. 1,89,804/- which was challenged in the Land Reference Case No. 07/2007 and the learned District Judge-IV, Hazaribagh after taking into consideration the oral as well as documentary evidence adduced by the applicant, found that the acquired land is not within the municipal area and two sale deeds relied upon by the applicants / appellants vide Sale Deed Nos. 17775 and 4639, which shows that in one of sale deed, 08 decimals of land was sold at the rate of Rs. 10,000/- per decimals, whereas in other sale deed, 08 decimals of land was sold at the consideration amount of Rs. 1,80,000/-. It also found that in respect of acquisition of land for the purpose of construction of rail line arising out of same notification, a L.R. Case No. 55/03 (Exhibit-3) was also filed, wherein the amount of compensation is determined @ Rs. 6600/- per decimals. It was also found that the acquired land is not situated in developed area and the Railway has also invested money for levelling the said land.

6. The learned court has also taken note of some judicial pronouncement of Hon?ble Apex Court as a matter of guideline for determination of compensation:-

(i) In the case of Mehrawal Khewaji and Trust (Regd.), Faridkot & Others Versus State of Punjab & Others reported in 2012 (3) JCR 47 (SC), the Hon?ble Apex Court has held that

?? where sale deeds pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course.?

Applying the above principles towards the facts of the case, the learned court below has recorded finding that on the basis of evidence adduced on behalf of the petitioners, it clearly transpires that the land which have been acquired which do not show potential value as nothing has been brought on the record to show the potentiality of the land acquired by the LAO for the construction of the railway line. It was also found by the Court below that the railway has also to

invest money for the filling of the ditch in the acquired lands.

Exhibit-A is the order sheet of L.A. Case No. 26/01-02, which also shows that in the year 2001 for the construction of the railway line, 47.52 acres land were acquired by the railway for which a notification was published in the year 2002 in the month of February in Hindustan Paper, and after completing the process of acquisition of the land and on the basis of different sale-figure, the State fixed the rate Rs. 1,00,000/- of the said acquired land in Case No. 36/01-02.

Similarly, Exhibit-B relied by the State also shows that in Village ? Khud 1, Thana No. 143, petitioner has been paid compensation @ Rs. 1733/- per decimal and total Rs. 17,07,334/-for the same purpose. This has been assessed on the basis of classification and nature of the acquired land of Village ? Kud 1.

(ii) The learned court below has also taken judicial notice of the principle propounded in the case of Haridwar Development Authority, Haridwar Vrs. Radhuveer Singh reported in AIR 2010 SC 1754, wherein the Hon?ble Apex Court has observed at paragraph-6 as under:-

6. The question whether the acquired lands have to be valued uniformly at the same rate, or whether different areas in the acquired lands have to be valued at different rates, depends upon the extent of the land acquired, the location, proximity to an access road/Main Road/Highway or to a City/Town/Village, and other relevant circumstances. We may illustrate :-

(A). When a small and compact extent of land is acquired and the entire area is similarly situated, it will be appropriate to value the acquired land at a single uniform rate.

(B). If a large tract of land is acquired with some lands facing a main road or a national highway and other lands being in the interior, the normal procedure is to value the lands adjacent to the main road at a higher rate and the interior lands which do not have road access, at a lesser rate.

(C) Where a very large tract of land on the outskirts of a town is acquired, one end of the acquired lands adjoining the town boundary, the other end being two to three kilometres away, obviously, the rate that is adopted for the land nearest to the town cannot be adopted for the land which is farther away from the town. In such a situation, what is known as a belting method is adopted and the belt or strip adjacent to the town boundary will be given the highest price, the remotest belt will be awarded the lowest rate, the belts/strips of lands falling in between, will be awarded gradually reducing rates from the highest to the lowest.

(D) Where a very large tract of land with a radius of one to two kilometres is acquired, but the entire land acquired is far away from any town or city limits, without any special Main road access, then it is logical to award the entire land, one uniform rate. The fact that the distance between one point to another point in the acquired lands, may be as much as two to three kilometres may not make any difference.

(iii) In the case of *Kasturi Vs. State of Haryana* reported in (2003) 1 SCC 354, the Hon^{ble} Apex Court has held that :-

It is well-settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3 amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for the residential or commercial purposes. A land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction; may be the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that area adjoining his land is developed area, is not enough particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land character of a developed area. In 84 acres of land acquired even if one portion on one side abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities etc. However, in cases of some land where there are certain advantages by virtue of the developed area around, may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, may be in some cases it is more than 1/3 and in some cases less than 1/3. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose.

(iv) In the case of *Anjani Molu Dessai Vs. State of Goa and Another* reported in (2010) 13 SCC 710, the Hon^{ble} Apex Court has held as under:-

The legal position is that even where there are several exemplars with reference to similar lands, usually the highest of the exemplars, which is a bona fide transaction, will be considered. Where however there are several sales of similar lands whose prices range in a narrow bandwidth, the average thereof can be taken, as representing the market price. But where the values disclosed in respect of two sales are markedly different, it can only lead to an inference that

they are with reference to dissimilar lands or that the lower value sale is on account of under-valuation or other price depressing reasons. Consequently averaging cannot be resorted to.?

It was further observed that :

?The lands are acquired of different type and different location, the averaging is not permissible, but where there are several sales of similar lands, more or less, at the time, whose prices as marginal variation averaging thereof is permissible. For the purpose of fixing of fare and reasonable market value of any type of land, abnormally high value or abnormally low value sales should be carefully discarded. If the number of sale deeds of the same locality and the same period, if they are intervals are available, average price of available number of sale deeds shall be considered as a fare and reasonable market price. Ultimately, it is in the interest of justice for the land users to be awarded where compensation.?

7. In view of the above guidelines, the learned court below came to the conclusion that the Exhibits which have been produced on behalf of the petitioner marked Exhibit-1 to 1/a, 2 to 2/a and 3 to 3/c, shows that in Exhibit-1, 8 decimals of land has been sold at total consideration of Rs. 80,000/-, whereas in Exhibit-1/a, 8 decimals of land has been sold at total consideration of Rs. 1,80,000/-, whereas Exhibit-3 which is concerned with L.R. Case No. 55/2003 and the judgment passed in the said case by the then Special Judge of L.A. Cases, in which compensation was fixed at the rate of Rs. 6600/- per decimal along with other statutory benefits and solatium. Learned court below took notice that so far Exhibit-1 & 1/a is concerned, the same relates to sale of small area of land. Hence, could not be considered as exemplar for fixing the market value of the land acquired in the instant case, rather 50 decimals of large chunk of land has been acquired in this case and simultaneously as per Exhibit-3 the compensation was fixed @ Rs. 6600/- per decimals along with said statutory benefits and Solatium. It was further noted that this exhibit (Exhibit-3) is also concerned with the land acquired in village Kud 1 and 2, for which a notification under Section 4(1) of the Act was duly published on dated 22.12.2001 and a L.A. Case bearing No. 26/01-02 was initiated. In the instant case, L.R. case arises from L.A. Case No. 03/2003-04 for Village- Kud 1 Part 2 for which a notification was published on dated 27.04.2004. Hence, this Exhibit-3 was taken for the best exemplar for considering the market value of the said acquired land of the petitioner in village ? Kud in the present case. Accordingly, market value of the land acquired in this case was fixed at the rate of Rs. 7,000/- per decimal with a deduction of 5% for the expenses occurred in the development of the said acquired land by the State and East-Central Railway along with 30% Solatium thereon and 12% interest from the date of notification to the date of award or taking possession whichever is earlier. Apart from this, the petitioner will also get 9% on the excess of the amount of compensation for the first time here after taking possession and will get interest thereon @ 15% per annum till the realization of the compensation amount. Accordingly, the award was passed,

which has been assailed in this appeal.

8. Learned counsel for the appellants has submitted that admittedly the acquired land is situated at 1 ½ Km. away from Hazaribagh Municipality adjacent to NH-100 Hazaribagh-Chatra Road. It is also revealed by witness that Village ? Kud is ½ Km away from Khirgaon Taxi Stand / Chatra Bus Stand. Thus, it is crystal clear that the land is exactly situated adjacent to township of Hazaribagh and the same is adjacent to National Highway and very close to Taxi Stand and Bus Stand also, as such, having high potentiality and the land is also acquired for the commercial purpose / construction of railway line, hence, increased amount of compensation at the prevailing rate needs to be granted.

9. It is further submitted that the leaned court below relied upon the previous orders passed on Reference Case relating to lands of same village about 2-3 years ago as a basis for determination of compensation amount in this case, has erred to consider the principles laid down by Hon?ble Apex Court in *Udho Dass Vs. State of Haryana & Others* reported in (2010) 12 SCC 51, wherein at paragraph-18, it has been held that :-

?Though the Act provides for the payment of the solatium, interest and an additional amount but, and it is common knowledge, that even these payments do not keep pace with the astronomical rise in prices in many parts of India, and most certainly in North India, and cannot fully compensate for the acquisition of the land and the payment of compensation is dribblets. The 12% per annum increase which courts have often found to be adequate in compensation matters hardly does justice to those landowners whose lands have been acquired as judicial notice can be taken of the fact that the increase is not 10 or 12 or 15% per year but is often up to 100% a year for land which has the potential of being urbanized and commercialized such as in the present case?.

10. It is also contended that the potential of land may also be determined at reference or appellate stage and simply the sale instances around or nearabout date of notification cannot justify potential of a piece of land. Potential can be recognized in future. It is open for landowners to contend that potential can be examined at reference stage or appellate stage either before the High Court or Supreme Court.

11. It is further contended by learned counsel for the appellants that I.A. No. 3461/2023 has been filed by the appellants for accepting some documents as additional evidence, which are sale deeds and the appellants have got recently. In the sale deed no. 4692 dated 23.07.2021 and sale deed no. 1265 dated 15.02.2022, executed in the Mouza-Kud-1 shows that the land has been sold in the aforesaid sale deed no. 4692 dated 23.07.2021 for Rs. 12 lacs @ Rs. 3,69,230/- per decimal and sale deed No. 1265 dated 15.02.2022 shows that 1.40 decimal of land has been sold for Rs. 6 lacs at the rate of Rs. 4,28,571/- per decimal. The price hike of land is sufficient enough to show potential of the land in Mouza-Kud-1, Hazaribagh. It is further submitted before the Land Reference

Court that two exhibits i.e. Exhibit-1 Sale Deed of the year 2002, whereby 8 decimals of land was sold for Rs. 80,000/- i.e. Rs. 10,000/- per decimal and Exhibit-1/a Sale Deed of the year 2002, whereby 8 decimals of land was sold for Rs. 1,80,000/- i.e. @ Rs. 22,500/- per decimal has been grossly ignored by the court below and even by the Land Acquisition Officer while fixing the rate of compensation to the extent of Rs. 7,000/- per decimal. Admittedly, Rs. 6,600/- per decimals land rate was fixed by Land Reference Case in another Case (Exhibit-3), wherein the land was acquired in the year 2001, as such, the principles propounded by Hon^{ble} Apex Court regarding increase of value of land and its high potentiality has not been followed by the learned Court below. Hence, the impugned order suffers from gross illegality and just and reasonable amount of compensation has been denied to the appellants. Therefore, this appeal may be allowed by setting aside the judgment and award of the learned Court below and just and reasonable compensation may be granted to the appellants.

12. On the other hand, learned counsel for the respondents has vehemently refuted the aforesaid contentions raised on behalf of the appellants and submitted that the appellants have miserably failed to point out any irregularity or illegality committed by the learned Court below while fixing the valuation of land as per the evidence adduced in the case by the appellants. The learned Court below has very wisely and aptly considered all relevant aspects and guidelines propounded by Hon^{ble} Apex Court in the matter of determining of the quantum of compensation amount in Land Acquisition Cases and arrived at right conclusion. The appellants have failed to show any evidence relating to annual price escalation above 10% in the locality and in absence of any such evidence, the impugned order was properly passed and the additional evidence relied upon by the appellants of the year 2021 Sale Deed is totally irrelevant for the purpose of this appeal. In the matter of assumption of compensation amount, there is no illegality or infirmity in the impugned judgment and award, calling for any interference by way of this appeal, which is devoid of any merit and fit to be dismissed.

13. The only point for determination in this appeal as to whether the impugned judgment and award suffers from any illegality or infirmity called for any interference in this appeal?

14. I have gone through the entire relevant aspects of the case and also considered the rival contentions of the parties as discussed at length hereinabove and find that the learned court below has enhanced that the compensation amount, which was assessed by the Land Acquisition Officer to the tune of Rs. 1,89,804/-, in the Land Reference Case No. 07/2007 @ Rs. 7,000/- per decimal. The very basis for such determination by the learned court below is based upon Exhibit-3, wherein in L.R. Case No. 55/2003 vide notification under Section 4(1) dated 22.12.2001 giving rise to L.A. in L.A. Case No.26/2001-02 and in the reference vide L.R. No. 3/2003-04, Rs. 6600/- was fixed which is taken to be just

exemplar for determination of the market value of the present case. Although, there is clinching evidence available on record as Exhibit-1 & 1/a of the similar years and inspite of taking judicial notice of the judgment of the Hon?ble Apex Court in the case of Mehrawal Khewaji Trust (Registered), Faridkot and Others (Supra), wherein it has been held that ?? where sale deeds pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course?, the court below has assigned no valid reason for not accepting the Exhibit-1 and 1/a while fixing amount of compensation in this case in consonance with the aforesaid principles laid down by Hon?ble Apex Court. However as pointed out by the learned counsel for the appellant that in case of Udho Dass (Supra), high potential of the land may be determined on the basis of future potential and its commercial value.

15. It is proved case that land in question is situated near the bus stand and very close to the National Highway and the acquisition is also for the purpose of commercial use of the land for construction of railway line, therefore, the land has high potential value. The increase of atleast 20% from the earlier instance appears to be just and reasonable.

16. In the instant case, Exhibit-1 & 1/a itself shows that 8 decimal land was sold in the simultaneous period @ Rs. 10,000/-per decimal, which was minimum and maximum at the rate of Rs. 22,500/- per decimal. Therefore, atleast Rs. 10,000/- per decimal appears to be just and reasonable compensation for the purpose of this case.

17. In view of the above, the impugned judgment & award is modified to the extent that appellants are entitled for the compensation @ Rs. 10,000/- per decimal, subject to deduction of 5% development charge along with solatium and interest, as awarded by the learned Court below.

18. Accordingly, this appeal is disposed of, subject to aforesaid modification in the impugned award.

19. Accordingly, the pending I.A. is also disposed of.