(2013) 02 PAT CK 0055

In the Patna High Court

Case No : First Appeal No. 359 of 1982

Ramanand Prasad Singh @ Ramanand Singh and Others — APPELLANT

Vs

State of Bihar — RESPONDENT

Date of Decision : 06-02-2013

Acts Referred:
Land Acquisition Act, 1894 — Section 11, 18, 23, 24, 25

Citation : (2013) 02 PAT CK 0055

Hon'ble Judges : Mungeshwar Sahoo, J

Bench : Single Bench

Advocate : Rajeev Ranjan Prasad and Mr. Nilanjan Chatterjee, for the Appellant; J.S. Arora, S.C. 6, Mr. Ajay Kumar, A.C. to S.C. 6, Mr. Amit Bhushan, A.C. to S.C. 6 and Mr. Ashok Kumar Singh (S.C. 3), for the Respondent

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—The claimant has filed this First Appeal against the judgment and decree dated 15.06.1982 passed by the learned Subordinate Judge, Begusarai in Land Acquisition Case No. 5 of 1975/33 of 1981. It appears that appellant''s land measuring 20 decimals out of 28 decimals was acquired by the State of Bihar for construction of Municipal Office along with other lands total measuring 1 acre 16 decimals. For the land of the appellants, compensation of Rs. 5,272.75 was awarded. The appellants received the same with objection and filed application u/s 18 of the Land Acquisition Act claiming enhanced compensation to the extent of Rs. 10,000. The appellants stated that the acquired land was purchased by his father on 28.08.1969 for a consideration of Rs. 10,000. A well was there. No compensation has been paid for the Well and due to partial acquisition, the value of the remaining 8 decimals land has become useless for construction of house thereon. The application was referred to the Civil Court. The State of Bihar only filed two documents, Exhibit A and B i.e., sale report and sale chart. By the impugned judgment and decree, the petition filed by the appellants has been dismissed.

2. The learned counsel for the appellants submitted that the Land Acquisition Judge has not considered the potential of the lands acquired. Although, admittedly, the land has been acquired for construction of Municipality Office but the compensation has been paid treating the land as Bhit land and not as homestead land. When the land was fit for construction of house, the same price as that of homestead land should have been fixed but without considering this aspect of the matter, very inadequate compensation has been given to the appellants. After acquisition of 20 decimals land, the remaining 8 decimals land has become now useless, therefore, the appellants were entitled for compensation in that regard also. A Well was also there but no compensation has been paid for the same. The learned counsel further submitted that the appellants produced the sale deeds of the relevant period but the Lower Court has discarded the same wrongly and the claim of the appellants has been refused by drawing adverse inference only. According to the learned counsel, the land is near the Municipal Office, there is pucca road and the town is growing but this potentiality has not been considered. The learned counsel relied upon the decisions of the Apex Court in Thakur Kamta Prasad Singh (Dead) by Lrs. Vs. The State of Bihar, , The Collector, Raigarh Vs. Harisingh Thakur and Another, and AIR 1977 SC 1126. On these grounds, the learned counsel submitted that the impugned judgment and decree be set aside and the appellants be awarded just and proper compensation.

3. On the other hand, the learned S.C. 6, Mr. J.S. Arora submitted that the sale deeds produced by the appellants relate to either 1 decimal or even less than 1 decimal land, therefore, the same cannot be taken as guideline for fixing the market value of the lands acquired by the State of Bihar measuring 1 acre 16 decimal. The State of Bihar has awarded the compensation on the basis of sale report collected for the period 1970 and the Exhibit B, the sale chart. According to the learned counsel, the process for acquisition of the land was started in the year 1961-62 and, therefore, for creating evidence showing higher market price, there were sale and purchase of lands. The land of the petitioner was Bhit land which was acquired for the purpose of construction of Municipality Office. There is difference between Bhit land and homestead land. For making the Bhit land fit for construction of house, some development work has to be done on it and, therefore, in no case, the market rate of the Bhit land will be equal to that of homestead land. The appellants themselves claimed that the land was purchased by father just two months prior to the notification u/s 4 of the L.A. Act but intentionally and knowingly, the appellants did not produce the said sale deed which is the best evidence. No explanation has been given by the appellant as to why they withheld the sale deed. Had the appellants produced the said sale deed, it would have drawn the light about the nature and market value of the land acquired. Since the same has not been produced, therefore, rightly adverse inference has been drawn. Moreover, whether adverse inference or no inference, the State of Bihar has given the just and proper compensation for the lands acquired considering the potential of the land. On these grounds, the learned

counsel submitted that the appeal be dismissed.

4. In view of the above submission of the parties, the point arises for consideration in this appeal is as to "whether the appellants have been able to prove that the compensation offered by the Land Acquisition Officer and confirmed by the Land Acquisition Judge is inadequate and the lands are capable of fetching higher market value and whether the impugned judgment and decrees are sustainable in the eye of law?"

5. Admittedly, the appellant''s land measuring 20 decimals has been acquired for construction of the Municipality building in Land Acquisition Case No. 110 of 1961-62. Subsequently, notification u/s 4 was issued on 06.10.1969. Therefore, the market value has to be determined with reference to the date of notification u/s 4 of the L.A. Act. The only submission made by the learned counsel for the appellants is that the Lower Court has not relied upon the sale instances, i.e., the sale deeds produced by the appellants being Exhibit 1 which is the sale deed dated 06.09.1969 and Exhibit 1/A, the sale deed dated 21.12.1967 and Exhibit 1/B, sale deed dated 09.09.1968. Now let us consider the sale deed one after the other. Exhibit 1 is the sale deed by which only 1 katha land was sold for Rs. 6,500. Likewise, by Exhibit 1/A, only 12 dhurs land was sold for Rs. 4,500 and likewise, by Exhibit 1/B, land measuring 3 1/2 katha was sold for Rs. 12,000. It appears that all these lands were purchased for the purpose of construction of house, i.e., the nature of the land involved is the homestead land. No doubt, the land acquired is also for the purpose of construction of Municipality Office but the nature is Bhit land. In other words, the nature of this land acquired differs from the land purchased in the sale deeds. Further, the State of Bihar has acquired a large chunk of land i.e., measuring 1 acre 16 decimals and the sale deeds referred to above relate to very small pieces of land.

6. In the case of Karnataka Urban Water Supply and Drainage board, etc. Vs. K.S. Gangadharappa and Another etc., , the Apex Court has held as follows:

8. In Suresh Kumar v. Town Improvement Trust, in a case under the Madhya Pradesh Town Improvement Trusts Act, 1960 this Court held that the rates paid for small parcels of land do not provide a useful guide for determining the market value of the land acquired. While determining the market value of the land acquired, it has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner. It is an accepted principle as laid down in Vyricherla Narayana Gajapatiraju v. Revenue Divl. Officer that the compensation must be determined by reference to the price which a willing vendor might reasonably expect to receive from the willing purchaser. While considering the market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy it must alike be disregarded; neither must be considered as acting under any compulsion. The value of the land is not to be estimated as its value to the purchaser. But similarly this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded.

The wish of a particular purchaser, though not his compulsion may always be taken into consideration for what it is worth. Section 23 of the Act enumerates the matters to be considered in determining compensation. The first criterion to be taken into consideration is the market value of the land on the date of the publication of the notification u/s 4(1). Similarly, Section 24 of the Act enumerates the matters which the court shall not take into consideration in determining the compensation. A safeguard is provided in Section 25 of the Act that the amount of compensation to be awarded by the court shall not be less than the amount awarded by the Collector u/s 11. Value of the potentiality is to be determined on such materials as are available and without indulgence in any fits of imagination. Impracticability of determining the potential value is writ large in almost all cases. There is bound to be some amount of guesswork involved while determining the potentiality.

7. In view of the above settled proposition of law, the rate paid for the small parcels of land do not provide an useful guide for determining the market value of the land acquired. This settled principle of law is applicable in the present case because the sale deeds produced cover only small parcels of land that too homestead land and the lands acquired by the State of Bihar is large area. In such circumstances, it cannot be said that a willing purchaser will purchase the large area of land in the same price for which he purchase small parcel of land.

8. It may be mentioned here that the appellant''s case is that the father purchased this very land measuring 28 decimals by registered sale deed dated 28.08.1969. The notification u/s 4 of the L.A. Act has been issued on 06.10.1969, i.e., within one month and 7 days of the purchase by the father of the appellants. So far this sale deed is concerned, it relates to the same very property which has been acquired and also in the same period. It also relates to somewhat larger area measuring 28 decimals. In my opinion, therefore, this sale deed is the best evidence for determining the market price of the land which was purchased by the father of the appellant and acquired by the State of Bihar within one month and odd days. The appellants although, stated in the evidence that his father has purchased the property for Rs. 10,000 by registered sale deed but he did not produce the sale deed. No explanation has been given. The trial court has drawn adverse inference against him because he withheld the best evidence. Even after that, also till date, the appellant is not giving any explanation as to why he did not produce the sale deed and as to why he is not producing before this court also. Only argument has been advanced that when the other evidences are available, adverse inference cannot be drawn. Now, if the appellant''s argument is accepted then according to the appellants, the court must fix the market price on the basis of the evidences produced by the appellants which are not related with the same land, nature of the lands covered in sale deeds are different than the acquired land although, the plaintiff-appellant has got the best evidence with him he will not produce. In my opinion, therefore, the conduct of the appellant itself is not acceptable. Had the appellants produced the sale deed, it would have disclosed the nature of the land also and the price at

which it was purchased. Now, the appellant is insisting that the land is homestead land because it was acquired for construction of house. I failed to understand how the nature of the land will be determined on the basis of purpose for which it was acquired. Even the agricultural land are acquired for the construction of house and after filling of the ditches, filling of the agricultural land it is made fit for construction of the house. In other words, after making development work, the land can be made fit for construction of house. Here, it is admitted that the land of the appellants was Bhit land. Whether the father of the plaintiff-appellant himself has purchased the same describing the land as homestead land is a question which would have been exposed, had the sale deed been produced by the appellants. In view of the above facts, in my opinion, the appellant has withheld the best evidence.

9. So far the oral evidences are concerned, it is settled principles of law that the market price cannot be fixed on the basis of oral evidence only. Moreover, here, in the present case, documentary evidence has been produced withholding the best evidence. So far the decision referred to above relied upon by the appellants are concerned, all those decisions are the guidelines for determining the compensation. The material facts which are to be considered while determining the compensation as provided u/s 23 of the Land Acquisition Act. Here, the State of Bihar has given the compensation, therefore, it cannot be said that without considering the procedure and the relevant materials, the State of Bihar has fixed the market price/paid the compensation. The compensation awarded covers everything under the Head provided u/s 23 of the L.A. Act.

10. So far the submission that no compensation has been made for severance is concerned, it may be mentioned here that only the vacant portion of the land has been acquired by the State of Bihar leaving the house of the appellants which existed on 8 decimals of land. Admittedly, 8 decimals land has been left un-acquired. In town, can it be said that 8 decimals land is not sufficient for construction of a house. How the value of the land has been decreased because of severance has not been explained to the conscience of the court. So far non-payment of compensation for Well is concerned, it may be mentioned here that Well is not a separate property rather it is an amenities/facilities attached with the land and is a part and parcel of the land. Therefore, no separate compensation is payable for the Well.

11. So far the sale deeds produced by the plaintiffs is concerned, the process for acquisition was started in the year 1961-62. In the case of State of U.P. and others vs. Ram Kumari Devi (Smt) and others and State of Uttar Pradesh etc. Vs. Smt. Ram Kumari Devi etc., , the Apex Court has held that "it is common knowledge that acquisition proposal would be made at an earlier point of time and finalization of acquisition would take a long time. In the process, on becoming aware of the acquisition, obviously, these sale deeds have been brought into existence to inflate the market value." Here also, since the acquisition process started in the year 1961-62, it was known to everybody and,

therefore, the court cannot shut eyes that the sale deeds which relate to small parcels of lad which were brought into existence to inflate the market value.

12. The settled law as has been held by the Apex Court in the case of Ahmedabad Municipal Corpn., etc. etc. Vs. Shardaben and others, etc. etc., and Hookiyar Singh etc.etc. Vs. Special Land Acquisition Officer, Moradabad and another, is that the burden of proof of market value prevailing as on the date of publication of notification u/s 4(i) of the L.A. Act is always on the claimant. The claimant is required to prove by adducing reliable evidence that the compensation offered by the Land Acquisition Officer is inadequate and the lands are capable of fetching higher market value. It is the duty of the court to closely scrutinize the evidence, apply the taste of prudent and willing purchaser, i.e., whether he would be willing to purchase in open and normal market condition of the acquired land and then determine just and adequate compensation.

13. Here, in the present case, the plaintiff has failed to produce the best evidence. For proving the market value of the land on the date of notification u/s 4 of the L.A. Act, I find that the sale instances produced by the plaintiffs cannot be taken to be guideline for fixing market price of the acquired land. I, therefore, find that the appellant has failed to prove that the compensation paid by the Land Acquisition Officer and confirmed by the Land Acquisition Judge is inadequate and the lands acquired were capable of fetching higher market value on the date of acquisition. Therefore, the finding of the Lower Court is hereby confirmed. In my opinion, the compensation paid to the appellants is just compensation. I, therefore, find no merit in this First Appeal and accordingly, this First Appeal is dismissed. No order as to cost.