(2013) 09 JH CK 0084

In the Jharkhand High Court

Case No : First Appeal No. 127 of 2006

Ramchandra Mahto and Another APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 13-09-2013

Acts Referred:

Citation : (2014) 1 AJR 478 : (2014) 2 JLJR 13

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

Advocate : Bhawesh Kumar, Ravi Kumar, Kr. Rahul Kamlesh and Arbind Kr. Sinha, for the Appellant; Rangan Mukhopadhyay, S.C. II., for the Respondent

Judgement

P.P. Bhatt, J.—Being aggrieved and dissatisfied by the common judgment and Award dated 02.02.2006, passed by the learned Special Land Acquisition Judge, Koderma in 753 Land Reference cases, the appellants who are land losers on account of Kesho Jalashay Project have preferred present group of appeals for enhancement of rate of compensation and for payment of the enhanced rate under the provisions of the Land Acquisition Act, 1894. The brief facts of the case are as under:-

The land in question was acquired for construction of a dam under the Kesho Jalashay Project. The land was acquired from 11 villages in Markachho block in Hazaribagh district (presently in Koderma district). Altogether about 721 acres of land belonging to villages ''Katahi'', ''Bhagtiyadih'', ''Kari khokho'', ''Pasiyadih'', ''Masmohana'', ''Paranwa tand'', ''Tikkopara'', ''Kailakhandar'', ''Nimadih'', ''Kundidhanwar'' and ''Bachhedih'' have been acquired. The acquisition took place in the year 1987-88 by following due process of law under the Land Acquisition Act and thereafter, Reference cases were filed by the villagers of different villages. One set of reference cases being L.R. No. 68 to 122 of 1990 in respect of land under Mouza-Bachhedih were decided on 03.09.1991. Being aggrieved by the said decision, the first appeals were preferred before this Court and after considering the facts and circumstances involved in those group of First Appeals, the Judgment and Award passed by the learned Special Land Acquisition Judge, was ordered to be set aside and the matter was remanded to decide afresh in accordance with law from initial stage after giving an opportunity for furnishing detailed statement by both the parties. It appears that another batch of Reference cases were disposed of by another judgment dated 02.12.1992, against which first appeals were filed in this Court and they were heard and decided on 03.12.2003, whereby this Court has remanded all the cases for fresh decisions. This Court also directed the learned court below for clubbing all the pending reference cases in respect of Kesho Jalashay Project. Accordingly, the learned court below dealt with and decided the Land Reference cases arising out of Kesho Jalashay Project and by an order dt. 02-02-2006 modified an award by adding 25% of the total amount determined against each award. Being aggrieved and dissatisfied by the aforesaid judgment and Award, the land losers of Kesho Jalashay Project, preferred the present group of first appeals.

2. The learned counsel for the appellants submitted that the learned court below failed to appreciate the oral as well as documentary evidence on record and thereby failed to give adequate compensation in respect of the land in question, though the land in question was having good facility of irrigation and capable of taking three crops in a year. It is further submitted that the learned court below has also not properly taken into consideration the various factors, such as, the location of the land in question, which is adjacent to the State Highway, Railway Station and the other factors, such as the educational and commercial activities in the nearby areas. It is further submitted that the learned court below has also not properly considered the fact that the Kesho Jalashay Project and the Panchkhero Jalashay Project were at the distance of about 10 kms. within the same block and having the similar quality of land. The purpose of acquisition was also the same. It is further submitted that the notification for acquisition of land in respect of Kesho Jalashay Project and Panchkhero Jalashay Project were also of the nearby period and not having a gap of more than one year. It is further submitted that the learned court below has also not properly considered the judgment delivered by this Court, wherein, compensation at the rate of Rs. 660/- per decimal was determined by this Court after careful consideration of the facts and circumstances involved in the matter. It is further submitted that the said decision was cited before the learned court below and copy thereof was also produced vide Exhibit-1 but the learned court below has not taken into consideration, the decision rendered by this Court in its proper perspective. It is further submitted that the appellants have adduced several evidences and most of the evidences produced by the appellants was relevant for the purpose of enhancement of the claim in support of their case. However, the said documentary as well as oral evidence has not been properly appreciated by the learned court below.

The learned counsel for the appellants invited the attention of this Court to some part of the evidences on record and submitted as follows:-

that the witnesses of appellants have also stated the facts in their deposition that a big part of acquired land are Dhan No. 1 and Tand No. 1 and fit to grow 3 crops in a year as there is good irrigational facility and good fertile land quality. It is further submitted that they have also stated that because of the industrial development in the area, the price of the land is increasing day by day.

that the appellants have also produced some documents as exhibits. Exhibit No. 1 shows that the land of the Bachhedih area was transferred to the Central Government (Telephone Department) at the rate of approx Rs. 2,000/- per decimal. This transfer of the land had taken place on 07.07.1987, one year prior to the acquisition of the land of the appellants for the said project.

that in support of the claim, one of the witnesses, witness No. 3 has categorically stated that his brother had sold 2 decimals land in January, 1987 in the acquired area at the rate of Rs. 1500/- per decimal. In this sequence the appellants have produced one another exhibit i.e. ext.-1/1 whereby land under Mouza Bachhedih was sold for consideration amount of Rs. 5,000/- for 10 decimals land on 07.11.1984, (about 4 years before the stated land acquisition).

that it reveals from the documentary evidence i.e. Exhibit-4, which is the judgment of L.A. Judge passed in L.R. Case No. 123/90 to 254/90, a vast track of land was acquired under Bhairwa Jalashay Pariyojana in the same district at the flat rate of Rs.736 per decimal.

that the appellants have produced certified copy of the Judgment passed in First Appeal No. 150/92(R) to 181/92(R) related to the acquisition of land for the Panchkhero Jalashay project within the limits of the same block, Markachho. Surprisingly, the judgment of this High Court has not been considered by the court below on the ground that the land of Panchkhero Jalashay Project was acquired on 23.03.1988 and the present reference cases are related to much earlier acquisition in the year 1987. This consideration is wrong. However, it is the fact that the acquisition of land under Panchkhero Jalashay Project was notified in the Official Gazette on 23.03.1988, the same year of acquisition of the appellant''s land.

3. As against that, the learned, counsel appearing for the Respondent-State Government by referring the counter affidavit filed by the Respondent-State, submitted that the learned court below after careful consideration of the evidence on record, has passed a detailed Judgment and Award and therefore, the same is not required to be disturbed and the Award passed by the learned court below may be confirmed. It is further submitted that 24 percent enhancement has already been considered by the Land Acquisition Officer and effect thereof has been given in the Award passed by the Land Acquisition Officer. The learned counsel for the Respondent-State Government by referring the observations made by the learned court below, submitted that the learned court below has discussed the oral as well as documentary evidence on record in detail and thereafter, reached to the conclusion, which appears to be in

accordance with law and therefore, the said findings may not be disturbed in the present group of first appeals.

4. The learned counsel for the appellants by referring the written submissions filed by him, submitted that during the pendency of these First Appeals, looking to the protest by land losers of the Kesho Jalashay Project, the Government of Jharkhand, Water Resources Department had written a letter to the Deputy Commissioner, Koderma with regard to payment to the land losers of the Kesho Jalashay Project vide Memo dated 18th March, 2009 requesting him to constitute a committee under his chairmanship, so that after dialogs with land losers, the problem could be resolved. It appears that in the light of the above-referred letter of the State Government, a Committee was constituted under the chairmanship of the Deputy Commissioner, Koderma (Respondent No. 1). The said Committee has other high level officers of the Government in addition to the Chairman. It appears that the said Committee after due dialogs with the land losers and after proper scrutiny of the matter made following recommendations to the State Government:-

(i) Looking to the demand of the land losers, further steps should be taken for the payment of the compensation to the effected tenants of the Kesho Jalashay Project on the basis of the compensation rate for the land losers of Panchkhero Jalashay Project, as fixed by the Hon''ble High Court. The Hon''ble High Court had fixed a flat rate of Rs. 660 per decimal with other benefits under the L.A. Act to the land losers of Panchkhero Jalasaya. Enclosure-2.

(ii) Steps should be taken for the disposal of appeals filed by the villagers (land losers) of the Kesho Jalashay Project by way of compromise application before the Hon''ble High Court, so that, the appeals be disposed of and the dispute between the department and the villagers be redressed.

It is submitted that in the light of the above stated recommendations of the High level Committee constituted by the State Government, calculation of compensation amount has been made by the Department and steps were also taken to explore the possibility of arriving at an amicable settlement by resolving the dispute through Lok Adalat. Accordingly, 319 First Appeal cases were referred to the Lok Adalat by this Court by its order dated 27.09.2010 passed in First Appeal Nos. 127 of 2006 and other analogous cases. It is further submitted that the Lok Adalat was also held in the premises of this Court on 09.10.2010, wherein, the Secretary of the State Government, Water Resources Department proposed to pay compensation amount to the land losers of the Kesho Jalashay Project @ Rs. 660/- per decimal. In this connection, a letter dated 09.10.2010 was issued by the Department under the signature of the Joint Secretary to the Government stating therein, that the Government was ready to pay the compensation to the land losers of the Kesho Jalashay Project @ Rs. 660/- per decimal but somehow the said proposal could not reached at settlement.

5. Now in light of above submission in the instant group of first appeals, the core

question which is required to be decided is as to "whether the compensation offered by the State Govt. is adequate compensation for the appellant or the appellants are entitled more than what has been offered". For the purpose of deciding above issue, following evidences adduced by the parties is required to be considered.

6. In the case of L. R. No. 68 to 122 of 1990/1 to 55 of 1997 (except 27/97) of village - Bachhedih the applicants examined altogether three witnesses and the opposite party examined two witnesses.

Following documents were also marked as exhibits:-

Exhibit 1 - Sale deed No. 8580 dt.07-07-1987

Exhibit 1/1 - sale deed No. 9054 dt. 07/11/1984 whereby 10 decimals of land were sold for Rs. 5000/-

Exhibit 2 - map of village Bachhedih

Exhibit 3 - khatian

Exhibit 4 ? order sheet of L.R. case No. 123/90 to 254/90

Exhibit A - Sale chart

Exhibit B - valuation khatian

Exhibit C - Order sheet of L.A. Officer dated 11.12.1980 and 18.01.1980

7. In the case of L.R. No. 779 to 885 of 1990 of Village- Masmohana before clubbing three witnesses were examined.

In these cases following documents are marked as exhibits:-

Exhibit-1 - order sheet of land acquisition Judge dt. 29-04-1992

Exhibit 1/A - order sheet of land acquisition Judge dt. 02-12-1992

Exhibit 1/B - order sheet of land acquisition Judge dt. 03-09-1991

Exhibit 2 - Certified copy of sale deed No. 8580 dt. 07-07-1987, 23 decimal of land of vill - Nawalsahi sold on for Rs. 45914

Exhibit 2/A - certified copy of sale deed No. 272 dt. 09-01-1987, 2 decimal of land of Vill - Masmohana sold for Rs. 3000/-

Exhibit 2/B - certified copy of sale deed No. 4426 dt. 19-05-1988, 8 decimal of land of vill - Masmohana sold for Rs. 8000/-

Exhibit 2/C - Certified copy of sale deed No. 9513 dt. 10-12-1985, 1 decimal of land of vill - Masmohana sold for Rs. 500/-

Exhibit 2/D - Certified copy of sale deed No. 8083 dt. 10-09-1984, 4 decimal of land of vill - Masmohana for Rs. 2000/-

Exhibit 2/E - Certified copy of sale deed No. 8921 dt. 29-11-1986, 10? decimal of land of Masmohana sold for Rs. 5000/-

Exhibit 2/F - certified copy of sale deed No. 10220 dt. 21-12-1984, 13 decimal of land of vill - Masmohana sold for Rs. 6000/-

Exhibit 3 - map of Markacho Anchal

8. In the cases of L.R case No. 915 to 923 of 1990 of Village Tikkopara, applicants examined three witnesses.

Exhibit-1 - order sheet dt. 02-12-1992 in L.R. No. 169/91 and with batch cases.

9. L.R. 898 to 914 of 1990/L.R. 455 to 471 of 1995, 1990 of Village Tikkopara, the applicants examined four witnesses.

Order sheet of L.R. No. 69/91 to 559/91 is marked as exhibit-1

10. In the case of L.R. case No. 674 to 676 of 1992 of Village Pasiyadih one witness is examined.

The applicants of L.R. No. 761 to 778 of 1992 have also relied upon the evidences given as aforesaid.

11. The applicants of L.R. No. 33 to 44 of 1991 Village Kailakhandar are hereinbelow:-

12. In the cases of L.R. Case No. 560/95 to 571/95 of village Kailakhandar following witnesses examined.

13. In the cases of 47 to 51 of 1991/583 to 587 of 1995 of village Bhagtiadih the applicants produced one witness.

14. In the cases of L.R. No. 718 to 740 of 1992, 295 to 296 of 1991, 435/91, 437/91 and 442/91 (L.R. No. 592 to 614 of 1995, 550 to 551 of 1995, 435/95, 439/95 and 442/95) of village Kundidhanwar following witnesses are examined.

15. In the cases of L.R No. 876 to 897 of 1990 of Vill - Paranwa tand following witnesses are examined.

16. In the cases of L.R. No. 223/95 to 330/95 (472/95 to 484/95) of VILLAGE - KATAHI following witnesses are examined.

In this case the opposite party has produced one witness.

17. In L.R. No. 373 of 1992 the applicants produced one witness, who proved the sale deed, who has stated about of the sale of 23 decimal of land of vill-Nawalsahi at the rate of 2000/-. He has further stated that the land acquired under 11 villages for Keso Jalashay pariyojana is of a similar category and we grew paddy, wheat and also vegetables from the land.

18. After clubbing of the cases, in the main file i.e. L.R. Case No. 779 to 875 of 1990 and L.R. Case NO. 40 to 42 of 1990 and L.R. Case No. 45 and 46 of 1991

the applicants adduces five witnesses.

Documents marked as Exhibits by the Applicants under L.R. 779/90 to 875/90

19. The opposite party has produced altogether 5 witnesses the substances of the evidences are given hereinbelow:-

Documents marked as Exhibits by the Opposite party

20. From perusal of the oral evidence of the applicant/appellant witnesses it appears that almost all the witnesses are claiming that their acquired lands were fertile and they use to grow three crops in a year in their land by irrigating it from the Keso River. It is also claimed that all the villages are adjacent to each other and the nature, value and potentials of land of all villages are almost same. They also claimed that there is a Mica Mines in the village Katahi. It is also stated that the value of the lands are increasing day by day. It is also stated that there is a Hospital, School, Pucca roads, Mines in the villages. They also claimed that a Pucca road is also crossing from the village. Most of the applicants claimed that the compensation at the rate of Rs.736 per decimal is the adequate and reasonable compensation. Some of them claimed that they are entitled to the compensation at the rate of Rs. 4000-5000 but they failed to produce any documentary evidences in support of their claim. So far the claim of compensation at the rate of Rs. 736/- per decimal, as had been granted earlier in the case of L.R. No. 68 to 122 of 1990, this court has already set aside the order, hence this rate cannot be accepted without any sufficient and cogent evidences.

21. So far the documentary evidences are concerned; it appears that the applicants have produced several sale deeds in support of their claims. From perusal of the Sale Deed No. 8580 dt. 07-07-1987, it appears that 23 decimal of land was sold to the Govt. for Rs. 45914/-. Exhibit 1/1 is the sale deed No. 9054 dt. 07-11-1984 of village Bachhedih whereby 10 decimals of land was sold for Rs. 5000/- in the year 1984. From perusal of the exhibits filed for village Masmohana it appears that vide Exhibit 2/A certified copy of sale deed No. 272 dt. 09-01-1987 was filed whereby 2 decimal of land of Village-Masmohana sold for Rs. 3000/. Exhibit 2/B is the sale deed No. 4426 dt. 19-05-1988 whereby 8 decimal of land of village - Masmohana sold for Rs. 8000/-. Exhibit 2/C is the sale deed No. 9513 dt. 10-12-1985 whereby 1 decimal of land of village-Masmohana was sold for Rs. 500/-. Exhibit 2/D is the sale deed No. 8083 dt. 10-09-1984 whereby 4 decimal of land of village- Masmohana was sold for Rs. 2000/-. Exhibit 2/E is the sale deed No. 8921 dt. 29-11-1986 whereby 10? decimal of land of Masmohana sold for Rs. 5000/-. Exhibit 2/F is the sale deed No. 10220 dt. 21-12-1984 whereby 13 decimal of land of vill-Masmohana sold for Rs. 6000/-. In the main case i.e. 779/92 (batch cases) exhibit-4A is the sale deed No. 8940 dated 05.08.87 filed by the applicants whereby 14 decimal of land was sold for Rs. 8500/-. Exhibit-4B is the Sale Deed 5915 dated 10.04.87 whereby 3.25 decimal of land was sold for Rs. 2000/-. Exhibit-4C is the Sale Deed 7953 dated 16.09.88 whereby 4 decimal of land was sold for Rs. 6000/-.

22. With regard to the determination of valuation of the acquired land, the learned counsel for the appellants based on the Full Bench decision delivered in the case of The State of Punjab-Versus-Pohu & Ors reported in AIR 1986 Punjab & Hariyana wherein it was held that where the sale deeds pertaining to different transactions were relied on behalf of Government the transfer deed representing the highest value should be preferred to the rest, unless there was strong circumstance justifying the different course. This court is of the view that the rate given under sale deed No. 8580 (exhibit-1) may not be taken into consideration for the reason that it was transferred to the Govt. for construction of telephone centre and the location of the land was also adjacent to the main road. This court is also of the opinion that rate given in the sale deed of very small plots are also not require to be taken into consideration for the reason that the rate of small plot will definitely be higher than a big chunk of land. The rate of sale-purchase instances of the land having area of at least 10 decimal and more is required to be taken into considerations for assessment of compensation. In the transaction made by way of sale deed No. 9054, rate was given Rs. 500/- per decimal in the year 1984 and in the transaction made by way of sale deed No. 9821 the rate was given Rs. 500/- per decimal in the year 1986 and in the transaction made by way of sale deed No. 10220 the rate is given Rs. 460/- per decimal in the year 1984 and in the transaction made by way of sale deed No. 9840 the rate was given Rs. 607/- per decimal in the year 1987. Since the land were acquired in the year 1987, the rate prevailing in the year 1987 will be relevant for purpose of deciding the compensation. The cumulative effect of the documentary and oral evidence on record is that it is a case of acquisition of land which is situated on a reasonably good location surrounded by areas having civic amenities and facilities like hospital, schools, railway station, telephone exchange, main road and further development activities were going on in nearby areas. It is evident that the land acquired had the potential of being developed for residential or industrial purposes as there is a Mica Mines in the area. Having regard to the potentials of the land such as Mica Mines, Pucca road crossing from the acquired land, hospital, schools and also the fact that the land was fertile and irrigation facilities were also available in the acquired land hence the price escalation of the land would be 15% in a year. To find out the average of all the four deeds, the rate per decimal is require to be taken which was prevailing in the year 1987 after increase of 15% per annum i.e. 725, 575, 667 and 607 respectively. The average of which comes to about Rs. 645/- or Rs. 650/- per decimal. This rate appears to be very close to the rate offered by the State Govt. which was assessed by the committees of senior officers.

23. It is also relevant to mention here that for Panchkhero Jalashay Yojana, some of the lands were acquired out of the same block i.e. the Markacho block in Koderma district and for this purpose notification u/s 4 of the Land Acquisition Act, 1894 was issued on 23rd March, 1988. This court while dealing with appeals arisen out of said acquisition delivered judgment on 18th December, 2003 in Appeal from Original Decree Nos. 150 to 181 of 1992 (R), the certified copy of

the said Judgment is also on record. In the said judgment, the market value of the lands acquired was assessed and determined at the rate of Rs. 66,000/- per acre i.e. Rs. 660/- per decimal and accordingly, the judgment and award passed by the learned Special Land Acquisition Judge was modified. It appears that the said judgment was in respect of the lands within the same block having similar position and similar surrounding as also having similar nature of acquisition. On perusal of paragraph 12 and 13 of the said judgment, it appears that this Court while dealing with the First Appeals arising out of the similar set of facts and circumstances considered the various factors including the location, importance, prospect and purpose of the lands and the special value attached to the special advantage possessed by the said lands and the potential of the said land while determination of the compensation. It appears that the other factors, such as location of Government offices, mica mines, hospital, schools etc. and the price factor on account of such activities were also taken into ac count by this Court. Thus, it appears that the aforementioned judgment, which was produced before the court was a guiding factor for the learned court below for determination of compensation, especially when the nature of land, almost similar and that too within one block. The judgment referred above was also before the learned court below and therefore, the observations and findings recorded by this Court ought to have been considered by the learned court below, which was apparently not properly done in this case. Moreover, the judgment delivered by this Court has attained finality as it has not been carried further or challenged in higher forum meaning thereby that the State Government has accepted the judgment and award passed by this Court. Under the circumstances, the view taken by this Court in Appeal from Original Decree No. 150 to 181 of 1992 (R) is required to be considered in the instant group of the First Appeals. The argument advanced by the learned counsel for the appellants in respect of the land and its potentiality are also required to be considered in light of the observations made in the judgment referred above. It appears that the learned court below while appreciating the evidence on record has failed to take into consideration the observations made by this Court in a similar case. The learned court below also failed to appreciate the sale deeds filed by the applicants. The arguments advanced by the learned counsel appearing for the State, whereby he tried to justify the order passed by the learned court below cannot be accepted for the stated reasons above. The precedent is required to be followed if it relates to similar set of facts and circumstances, but in the instant case, it has not been properly considered by the learned court below. It also appears that the court below has awarded unjustifiable amount to the land losers of Kesho Jalashay Yojana, despite sufficient evidences oral as well as documentary available on record in support of the appellants. Moreover it also appears from the written submissions filed by the learned counsel for the appellants that a high level committee headed under the chairmanship of the Deputy Commissioner Koderma (sole respondent) has recommended the compensation at the rate of Rs. 660/- per decimal to the present appellants, which is equivalent to the payment made to the land losers of the Panchkhero Jalashay Project. It also appears that the state Government has issued a letter dated 9.10.2010 declaring that the land losers of the Kesho Jalashay project (the appellants) shall get compensation against the acquired land at the rate of Rs. 660/- per decimal, equivalent to the land losers of the Panchkhero Jalashay project. It is also the fact that the land in question was acquired for the purpose of Kesho Jalashay Project and Panchkhero Jalashay Project by the respondent state having similar public purpose within the limits of the same block Markachho in Koderma district. It also appears that during the pendency of these appeals, much exercise have been done for the settlement of dispute in respect of compensation against acquired land. The appellants as well as respondents at one point of time agreed to accept the compensation amount equivalent to the payment made to the land losers of Panchkhero Jalashay Project but somehow the said proposal could not reach to final settlement in spite of state litigation policy came in to existence.

Therefore, now this court after careful consideration of the documentary and oral evidence on record discussed herein above, in the interest of justice and to secure the ends of justice between the land losers/appellants, comes to the conclusion that the compensation Rs. 66,000/- per acre i.e. Rs. 660/- per decimal is reasonable and adequate compensation in the instant case.

24. Accordingly, the judgment and award passed by the learned court below is required to be modified to the above extent. Accordingly, the market value of the lands acquired is assessed at Rs. 66,000/- per acre i.e. Rs. 660/- per decimal. Besides that the appellants are also entitled to the interest as per the amended act of 1984 from the date of possession of the land till payment and the solatium @ 30 per cent granted under the Act. The impugned judgment and award is modified to the above extent. With the aforesaid modification in the impugned Judgments and Awards, this group of First Appeals are ordered to be disposed of. The Respondents are directed to deposit the awarded amount on or before 13th of November, 2013. It is further clarified that the awarded amount shall be deposited after adjusting the amount, if any, has already been paid towards compensation. After deposit of the amount the appellants shall prefer appropriate application for disbursement of the awarded amount on or before 19th November, 2013 and the said applications for disbursement of the amount be referred to the National Lok Adalat to be held on 23rd November, 2013. The Registry of this Court at the time of making payment shall deduct the deficit court fees on the basis of awarded amount. The deficit court fees shall be deducted first at the time of payment of compensation. The copy of the judgment shall be made available to the learned counsel for the parties.

