(1929) 02 PAT CK 0007

In the Patna High Court

Rameshwar Singh Bahadur APPELLANT

Vs

Secy. of State RESPONDENT

Date of Decision : 08-02-1929

Acts Referred:
Land Acquisition Act, 1894 — Section 6

Citation : AIR 1929 Patna 733

Hon'ble Judges : Chatterji, J;Adami, J

Bench : Full Bench

Judgement

Chatterji, J.—This appeal arises out of a proceeding in a land acquisition of three kathas of land for the construction of a post office. The appellant was allowed compensation of Rs. 57-11-1 by the Collector. On a reference to the District Judge this has been confirmed. Being aggrieved by this decision the appellant has come to this Court and contends that on the materials placed before the Court and especially in view of the fact that the Secretary of State adduced no evidence whatsoever, he should have been awarded a much higher compensation.

2. In support of his contention the appellant relies mainly on four kabuliyats executed by different persons in respect of lands by the side of the acquired piece of land and urges that these lands had all been acquired in connexion with the starting of hat, and as such the potential value of the land which has been acquired ought to have been taken into'' account. The three kabuliyats relied on by the appellant are dated 5th May 1925 and the one is dated 4th April 1925, The declaration u/s 6, Land Acquisition Act is dated 20th November 1925, and published on 25th November 1925. The learned District Judge did not accept, these kabuliyats on the ground that the notification u/s 4 was dated 23rd May 1925, and some survey must have been made in the locality before that. No evidence has been led on behalf of the Secretary of State as to whether any surveyor did go to the land before the-date of these kabuliyats. In the next place, the persons who executed the kabuliyats, have been examined and they swear that they have built golas in connexion with the hat which has since" been

established. There is no evidence on the side of the Secretary of State adduced to rent this. There was a certain sale deed referred to by the learned District Judge on the basis of which the valuation had been made by the Collector, but this document does not appear to have been produced at the trial or exhibited, so we are left entirely with the documents and evidence adduced by the appellant.

3. It is settled law that the value should be calculated with reference to the most lucrative and advantageous way in which the land might be used: see Ujaggar Lal v. Secy. of State [9911] 33 All. 733 . The special adaptability of the land acquired cannot be altogether ignored in the determination of its market value: see Baroda Prosad Dey, Chairman, Serampore Municipality Vs. The Secretary of State for Inida In Council, . Reference was also made to Mohini Mohan Banerjee and Others Vs. Secretary of State for India In Council and Others, . The facts of that case are distinguishable from the present one, because there a brickfield was already in existence and it was considered that the land acquired could have been taken settlement of as a brickfield whereas in the present case no hat was then established. But the principle of that case has some application to the facts of the present case also. In Cedars Rapids Manufacturing and Power Co. v. Lacoste [1914] A.C. 569. referred to in the case of Mohini Mohan Banerjee and Others Vs. Secretary of State for India In Council and Others, .

4. It is laid down that the value to be paid for is the value to the owner as it exists at the date of the taking; such value consists of all advantages which the land possesses, present or future, but it is the present value alone of such advantages that falls to be determined. The fundamental importance of the test that the operative effect of special adaptability or future utility must be estimated not by idle speculation and unpractical imagination but by prudent business considerations such as would weigh with an intending purchaser at the imaginary market which would have ruled had the land been exposed for sale when it was subjected to compulsory acquisition must not, however be lost sight of. Applying all these principles to the facts of the present case, we get that the appellant did settle lands in the neighbourhood or rather on the boundaries of the acquired land at the rate of Rs. 5 per katha annually This brings the value at 20 years'' purchase to Rs. 100 per katha. On that basis the value of three kathas of land acquired would come up to Rs. 300. The award in the present case shows the apportionment between the Maharaja and some tenants with respect to the land acquired, almost in the proportion of half and half. Therefore, what the appellant is entitled to would be half of this Rs. 300 namely Rs. 150. I think it would be a fair estimate if this compensation be awarded to the Maharaja to cover all items for the piece of land acquired. It must also be remembered that it is quite close to the station.

7. We allow the appeal to this extent and vary the decree of the Court below as indicated above.

8. Considering that the claim of the appellant was highly exaggerated, each party

shall bear its own costs.

Adami, J.

9. I agree.