
(2014) 11 MAN CK 0007
In the Manipur High Court
Case No : L.A. APPEAL No. 1 of 2008

R.K. Tamphasana Singh

APPELLANT

Vs

The Collector

RESPONDENT

Date of Decision : 04-11-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4, 6, 9
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 — Section 24

Citation : AIR 2015 Manipur 4 : (2015) 1 GLT 691

Hon'ble Judges : Laxmi Kanta Mohapatra, C.J

Bench : Single Bench

Advocate : C. Komol and Th. Ranjit, Advocate for the Appellant; R.S. Reisang, Sr. G.A, Advocate for the Respondent

Judgement

Laxmi Kanta Mohapatra, C.J.—Heard Mr. C. Komol Singh, learned counsel appearing for appellant as well as Mr. R.S. Reisang, learned Sr. GA appearing for the respondents.

2. The land owner not being satisfied with the judgment and order dated 30.8.2008 passed by the District Judge, Manipur West, Imphal in a reference made under section 18 of the Land Acquisition Act, 1894, has preferred this appeal.

3. The facts leading to filing of the application for a reference under section 18 of the Land Acquisition Act, 1894 (for short "the Act") are that the Government issued a notification under section 4 of the Act on 31.01.1986 containing the names of pattadars to be affected by the said acquisition. The said notification was sent to the SDO, Bishnupur to be pasted at conspicuous places of the locality inviting objection. Thereafter notification under section 6 of the Act was issued by the State Govt. on 7.4.1986. The SDC in presence of the affected pattadars demarcated the land to be acquired and special as well as general notices under section 9 of the Act were served on each and every pattadar. No objection having

been received from the pattadars, the rates of compensation according to the size of the land acquired were worked out on the basis of market value and information was given to each and every pattadar of the Award declared on 6.11.1987.

3.1. The appellant on whose application the reference was made under section 18 of the Act is the son-in-law of the original owner of the land, namely Chanam Tomba Singh. According to the appellant, he had married the first daughter of Chanam Tomba Singh, namely Shyama Devi. The said Ch. Tomba Singh died in the year 1977 leaving behind his wife, Rajani Devi and three daughters, namely Shyama Devi (wife of the appellant), Loidang Devi and Ngangbi Devi apart from one son, namely Chanam Suranjoy Singh. The said Rajani Devi died sometime in 1981-82 and the son, Suranjoy Singh also died in the year 1982. The wife of the appellant, Syama Devi died in 1978 leaving behind the appellant and three sons. Late Ch. Tomba Singh at the time of his death left behind a piece of immovable property a part of which was acquired by the Government under the said notification. Late wife of Ch. Tomba Singh, who happened to be the mother-in-law of the appellant had sold a piece of land under Patta No. 8/204 B.T. covered by C.S. Dag No. 38 measuring 0.66 acre under a registered Sale Deed dated 1.4.1980 in favour of the appellant. It is also the claim of the appellant that his mother-in-law, Rajani Devi gifted a piece of land under Dag No. 37 measuring .52 acre under Patta No. 8/204/B.T. in August, 1977 for the help rendered by him to the family of his in-laws. Though the two pieces of land had been recorded in the name of the appellant, after being mutated, the notification under section 4 of the Act was published without indicating his name in the list of pattadars and the said list was prepared on the basis of record of right made in 1960 and consequently the name of a dead person, i.e. the father-in-law of the appellant, was shown as the pattadar in respect of the said two piece of lands. The further case of the appellant is that in the notification under section 4 of the Act, the land under Dag No. 38 was wrongly shown as of Angalphou class whereas the same is Ingkhol class. It is also the case of the appellant that he had excavated 4(four) ponds in the acquired land and was earning his livelihood from pisciculture. After acquisition the appellant not only lost his residential house standing on the acquired land but also lost his livelihood and therefore the compensation awarded by the Collector was inadequate for which a reference was sought for.

4. According to the appellant, the market value of the land acquired from out of Dag No. 38 would be Rs. 50,000/- without the value of improvement made thereon. The value of the wooden house would be around Rs. 40,000/-. After acquisition only a small strip of land is left out of Dag No. 38 as well as Dag No. 37 which became an unusable and therefore, he was entitled for compensation in that regard. The further claim was that he was entitled to compensation of Rs. 45,000/- towards the value of fruit bearing trees and a sum of Rs. 21,000/- towards the non-fruit bearing trees. The appellant also claims that he having improved the acquired land by excavating four ponds spending Rs. 4,77,225/-

and that being the only source of income, he is entitled to loss of income to the tune of Rs. 15,00,000/-. Accordingly, the appellant in the reference claimed a total sum of Rs. 28,01,155/- with 18% p.a. interest from the date of Award.

4.1. The respondents did not file any written statement and on the basis of the pleadings, the learned District Judge framed 5(five) issues. Undisputedly, there was a civil dispute between the appellant and his in-laws and in the said Suit it was decided that the appellant is the owner of Dag No. 38 and he is also entitled to 1/6 share from out of Dag No. 37. The said judgment and decree of the Court is now the subject matter of an appeal. However, the appellant does not dispute the said position as decreed by the Competent Civil Court.

4.2. With the above background, the learned District Judge considered the issues and came to the following conclusions:-

i) The land covered under Dag No. 38 is recorded Angalphou Paddy Field, which was subsequently converted into Ingkhol class at the instance of the appellant in collusion with the then Circle Mandol. Therefore, the question of excavating 4 fishery tanks at the cost of Rs. 2-3 lakhs and earning his livelihood does not arise for consideration. The land being a paddy field, the compensation allowed was justified;

ii) The claim of the appellant in respect of the unusable land after acquisition is also not justified as the severance within the meaning of the word could not provoke the owner whose property has been sliced to come to the Court for compensation for such severance;

iii) The District Collector while calculating the compensation payable omitted to include the cost of roofing materials though at the time of measurement of the acquired area it was found that the house constructed on Dag No. 37 was of ekra thatching roofing, bamboo structure and ekra walling and mud plinth.

5. With the above findings, the learned District Judge rejected almost all the claims made by the appellant but directed the District Collector to assess a market value of the dwelling house by taking into consideration the ekra thatching roofing materials, bamboo structures and ekra walling and mud plinth.

6. Shri C. Komol Singh, learned counsel appearing for the appellant referred to the notification under section 4 of the Act and submitted that the acquisition notification clearly shows that the land covered by Dag No. 37 & 38 are of Ingkhol class and therefore, there was no occasion on the part of the learned District Judge to hold that the land covered under Dag No. 38 is Angalphou paddy field. It was also contended that on an application filed by the appellant to the Department of Fishery, Manipur an enquiry was conducted and the value of the 4 ponds was calculated at Rs. 3.16 per cubic meter and therefore the existence of 4 ponds on Dag No. 37 & 38 could not have been disbelieved by the learned District Judge. Mr. C. Komol, the learned counsel appearing for the appellant further submitted that the balance land after acquisition from out of

Dag Nos. 37 & 38 are two strips of land which cannot be used for any purpose and therefore the appellant was entitled to compensation. It was also contended that the awarded amount was not paid to the appellant in spite of repeated approach and more than 5 years having passed in the meantime, under section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 the appellant is entitled to compensation at the present market value.

7. Mr. R.S. Reisang, learned Sr. GA appearing for the respondents submitted that there are two other claimants, who are the two sisters of late Syama Devi, wife of the appellant. The said two sisters were directed to be made defendants in the said Suit and had also filed written statement but the same was not taken into consideration by the learned District Judge. According to the learned Sr. GA, since the said two sisters of late Syama Devi are also entitled to be heard being the co-owners in respect of Dag No. 37, the matter should be remitted back to the learned District Judge for reconsideration.

8. Let me first deal with the technical issues raised by the learned Sr. GA. From the order sheet, I find that by order dated 10.7.1998, the learned District Judge has directed that the two sisters as stated above be made as defendants 1 & 2. Accordingly in pursuance of the said order the two sisters filed a written statement before the learned District Judge on 2.8.1998. However, the impugned judgment does not indicate that the said two sisters, namely Loidang Devi and Ngangbi Devi, were parties in the proceedings. The judgment is also silent about the written statement filed by them. Clearly the learned District Judge has committed an error of law by not making the two sisters of late Syama Devi as parties to the proceeding and in not considering the written statement filed by them even though as per the decree both of them are co-owners in respect of Dag No. 37. On this ground alone, the case is liable to be remitted back to the learned District Judge for reconsideration.

8.1. So far as the acquisition of land is concerned, from exhibit A/1 it appears that a certificate has been issued by the SDC, Oinam, District Bishnupur indicating there in that the lands covered under Dag No. 37 & 38 are of Ingkhoh class. The said document has not been taken into consideration by the learned District Judge while holding that the land covered under Dag No. 38 is an agricultural land. Merely because the District Collector deposed that the land covered under Dag No. 38 is agricultural land the same should not have been accepted on the face of Exbt. A/1.

8.2. So far as existence of 4 ponds is concerned, from Exbt. A/7 I find that the appellant had submitted an application for issuance of a valuation certificate in respect of the said 4 ponds and the Joint Director of Fisheries on the basis of such application had requested the District Fishery Officer, Bishnupur by letter dated 30.11.1987 for issuing a valuation certificate. On the basis of the said letter of the Joint Director of Fishery, the District Fishery conducted an enquiry and found existence of 4 fishery tanks and submitted valuation report in Exbt.

A/8. These two documents prima facie show that 4 fishery tanks were in existence on Dag No. 37 & 38. These two documents have been completely ignored by the learned District Judge while coming to a conclusion that the lands covered under Dag No. 38 being agricultural land, in absence of permission from the Competent authority, it could not be converted in to fishery tanks. Therefore, the claim of the appellant towards cost of excavating of the 4 tanks and loss of his income needs to be considered afresh with reference to the above two documents, Exbt. A/7 & A/8.

8.3. The other claim of the appellant is with regard to the small strips of land left out of Dag No. 37 & 38 after acquisition. In this regard there appears to be no dispute that after acquisition of part of Dag No. 37 & 38 only two strips of land are left. If the said small strips of land are not of any utility, the appellant's claim is justified. Therefore this aspect of the claim also requires reconsideration by the learned District Judge with reference to the evidence regarding the utility of the balance land after acquisition. So far as the last submission of Mr. Komol, learned counsel appearing for the appellant is concerned, I find from Exbt. A/6 that the appellant had prayed for issuance of the Cheque in his name so far as the award is concerned in 1987. The said application was addressed to the Executive Engineer, Flood Control, Drainage Division No. II, Irrigation and Flood Control Deptt., Manipur. The said Executive Engineer under Exbt. A/6 called for a clarification from the Collector Land Acquisition and thereafter no further step was taken for payment of the awarded amount to the appellant. Though it is submitted by Mr. R.S. Reisang, learned Sr. GA that the compensation could not be paid considering the dispute pending between the appellant and his in-laws, such a stand does not appear to have been taken before the learned District Judge by filing a written statement. If the said document in Exbt. A/6 is accepted and the Court accepts the submission of the learned counsel for the appellant that till today the compensation has not been paid, the applicability of section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is to be considered.

9. I am, therefore, of the view that it is a fit case to be remitted back to the learned District Judge for disposal afresh after giving an opportunity of leading evidence to the two sisters of late Syama Devi, who had been directed to be made as defendants 1 & 2 in the Suit and who had filed written statement in the Suit. I therefore allow the appeal, set aside the impugned order passed by the learned District Judge and remit the matter back to the learned District Judge with the following direction:

i) The two sisters of late Shyama Devi, who had been directed to be made defendants 1 & 2 vide order dated

10.7.1998 be noticed to appear and an opportunity be also given to them to adduce evidence if they so desire. After recording evidence from the side of said two defendants, if any, the learned District Judge shall proceed to decide the case on the existing evidence with reference to the observations made by this

Court in the judgment. Since it is an old matter, the learned District Judge shall take care and dispose of the case as early as possible preferably within 6(six) months from the date of communication of this order.