
(1989) 01 OHC CK 0019
In the Orissa High Court
Case No : First Appeal No. 73 of 1986

S. Somaya

APPELLANT

Vs

Special Land Acquisition Officer, Berhampur

RESPONDENT

Date of Decision : 05-01-1989

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 54

Citation : AIR 1989 Ori 192 : (1989) 1 OLR 180

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : R. Mohanty and J. Panda, for the Appellant; S. Rath, General and S.K. Das, A.S.C., for the Respondent

Final Decision : Partly Allowed

Judgement

S.C. Mohapatra, J.—This appeal u/s 54 of the Land Acquisition Act filed by the claimant is confined to the compensation payable for trees.

2. By Notification u/s 4(1) of the Act published on 11-6-1971, 625 acres 53 cents of land in Golabandha and other villages were acquired for Air Guided Missile School, Golabandha. Land of the claimant is included within the total land acquired. Collector awarded compensation for trees following the rate given in the list prepared by the Delta Irrigation Department in 1964. Claimant received the compensation under protest and requested for a reference to Court and accordingly, the matter was referred to Court u/s 18 of the Act. Trial Court followed the Division Bench decision of this Court in F. A. 268 and batch of 1981 (Chinaga Joga Rao v. Special Land Acquisition Officer, Berhampur) decided on 23-8-1985 and awarded 20% more towards the value of trees. This is the grievance of the appellant.

3. Claimant in his objection stated that there were 30 fruit bearing coconut trees and 500 banana trees besides other trees. In evidence he stated as P.W. 1 that there were 30 fruit bearing and 2 small coconut trees and fifty banana trees.

Land Acquisition Officer (D.W. 1) however, stated that there were 40 fruit bearing, 15 non-fruit bearing and 1 small coconut tree. No cross-examination has been made with regard to banana trees. Trial Court was correct in accepting the number of trees as stated by the Land Acquisition Officer.

4. There is no evidence with regard to value of non-fruit bearing and small coconut trees. Compensation has been awarded by the Collector at the rate of Rs. 80/- per fruit bearing coconut tree, Rs. 40/- per non-fruit bearing coconut tree and Rs. 10/- for the small coconut tree. Trial Court added 20% more to the value. In absence of any evidence there is no scope for interference with the valuation of non-fruit bearing and small coconut trees. Rate fixed by the trial Court is affirmed.

5. Land Acquisition Officer (D.W. 1) stated that coconut was selling at Rs. 1.25 paise at the time of notification. P.W. 1 stated that one coconut tree bears 300 nuts per year. In the objection, it was stated that 300 coconuts valued Rs. 300/- are yielded annually per tree. This uncorroborated testimony cannot be accepted wholly. However, realities of life cannot be forgotten. Fruit bearing coconut trees bear some fruits. Land Acquisition Officer should have taken note of the same to award compensation on that basis. Trial Court also ought to have considered the same. Judgment of the trial Court is vulnerable on that account.

6. Learned Advocate General submitted that in view of the decision of the Division Bench which was followed by me in F.A. 202 of 1984 (Special Land Acquisition Officer, Berhampur v. Jutti Torinayya) decided on 7-11-1988 there is no scope for interference in this appeal since the acquisition was in respect of the same project under the same notification. In the decision of the Division Bench the only question was whether the rate indicated by the Delta Irrigation Department in 1964 was acceptable as regards value of trees. Division Bench held that hard realities of life cannot be forgotten and in absence of direct evidence made a guess work to enhance the rate by 20%. There was no specific dispute with regard to value of fruit bearing coconut trees. Same is the effect of my decision in F.A. 302 of 1984 (supra). In this case, however, there is some evidence with regard to fruit bearing coconut trees. Thus, the two earlier decision will have no application to the present case.

7. In F.A; 166 of 1984 (Special Land Acquisition Officer, Berhampur v. Togi Mohalakshmi) decided today (5-1-89) I have held that compensation payable per fruit bearing coconut tree shall be Rs. 650/-. The same rate is available to the appellant.

8. In the result, appeal is allowed in part. The judgment of the trial Court is modified to the extent that compensation for each fruit bearing coconut trees shall be paid at Rs. 650/- All other valuations are confirmed. Claimant, is entitled to Statutory benefits permissible under, the Act as amended by Act 68 of 1984. No costs.