(2019) 08 JH CK 0080

In the Jharkhand High Court

Case No : First Appeal No. 132 Of 2012

Sagar Tirkey And Ors — APPELLANT

Vs

State Of Jharkhand And Ors — RESPONDENT

Date of Decision : 01-08-2019

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 54

Citation : (2019) 08 JH CK 0080

Hon'ble Judges : Ananda Sen, J

Bench : Single Bench

Advocate : B.N. Dey, S.K. Dey, Bhaiya Vishwajeet Kumar, Mitul Kumar, Sanjeev Thakur

Final Decision : Allowed

Judgement

1. Heard counsel for the parties.

2. This first appeal under Section 54 of the Land Acquisition Act, 1894, has been filed by the land loosers against the judgment and award passed in a reference under Section 18 of the Land Acquisition Act, 1894, praying for higher compensation.

3. Land in Thana No.214, Village Namkum, Khata Nos.35 and 33, were acquired by the State for the purpose of construction of an over-bridge. 38 decimals of land of plot No.245, Khata No.35 was acquired, which was Don II land. In respect of khata No.33, land in five plots were acquired, those are plot No.247 area 24.336 kathas, plot No.248 area 0. 375 kathas, plot No.249 area 7.91 kathas, plot No.251 area 1.95 kathas and plot No.253 area 57.736 kathas. Nature of the land is Don II, parti, Tanr I. The total acquisition is thus an area of 1.89 acres. Notification is dated 20.03.2007, which was published in the gazette on 26.05.2007. Two awards were prepared - one award in respect of Khata No.35 and another in respect of plots involved in khata No.33. The lands were valued at Rs.5,50,475/- for the first award and for the second award valuation

was Rs.37,51,075/-. For the total area of land measuring 1.89 acres, Rs.43,01,550/- was the land value assessed by the State, which comes to Rs.22,759/- per decimal at a flat rate irrespective of the classification of the lands.

4. As the land loosers had objected to the said valuation and the amount of compensation, they opposed. The Collector then made a reference in terms of Section 18 of the Land Acquisition Act, 1894 to determine the market price of the acquired land. Land Reference Case No.5 of 2008 was registered, which is Land Acquisition Case No.21 of 2006-07.

5. Claimants claimed that the valuation is absolutely low and unreasonable. They submit that the rate could not have been less than Rs.2,00,000/- per katha, i.e., Rs.1,30,000/- per decimal. It is submitted that the land is just next to the two National Highways and there is a long distance railway line near by the said lands. It is submitted that the lands are very near to the Ranchi Railway Junction and Namkum Railway Station and are very near to the Ranchi Municipal area. He submits that there are number of big shops near the lands acquired, thus, much higher amount would be the land value. In support of their claim, claimants have exhibited some documents, which are as under:

Exhibit 1 : Certified copy of khatian of Khata No.33 and 34

Exhibit 1/A : Certified copy of Khatiyan of Khata No.35

Exhibit 2 : Original Municipal receipt of Ward No.22/49 dated 29.10.2008 Mark 'X' Xerox copy of valuation chart

Exhibit 3 Original Map of Mouza Namkum, P.S. Ranchi.

Exhibit 4 : Rate report sent by L.A.O., Ranchi.

Exhibit 5 Certified copy of sale deed No.18390 dated 23.12.2008

6. Two witnesses were examined on behalf of the claimants. C.W.1 is the claimant himself. He deposed that he is Khatiyani Railyat and after the death of his father, he has acquired the said lands by inheritance.

He stated that the lands have been acquired, but, prevalent market rate has not been fixed while assessing and determining the compensation. He stated that Ranchi town is very nearby. He deposed that Ranchi-Purulia Road and Ranchi-Tata Road is just next to the lands acquired. He deposed that Namkum and Ranchi Railway Stations are also very near to the lands acquired. There are several residential buildings, army camp, Markets, Schools, Hospital nearby. He stated that due to the development, the rate of land in Ranchi town is Rs.8,00,000/- per decimal.

C.W.2 is Lilar Sahu. He is resident of Village Dibadih, P.S. Doranda, Ranchi. He supported the evidence of C.W.1 He submitted that lands were fertile with a yield of 50-60 mans of paddy. He stated that not only paddy, but potatos were also grown. He stated that He did not have perfect knowledge about the current market value of the lands.

7. No witnesses nor any documentary evidence was adduced on behalf of the State.

8. The Court below, considering the application and evidence, has ordered that the prevalent market rate should be Rs.30,000/- per decimal. Further additional compensation and other benefits, which the claimant is entitled as per the Land Acquisition Act, 1894 was granted.

9. Aggrieved by the said judgment and award, the claimant has preferred this appeal.

10. Mr. B.N. Dey, learned counsel appearing on behalf of the claimant, submits that the land is within Ranchi Town, thus, the value should not have been assessed at Rs.30,000/- per decimal. He submits that there are two Highways, which are just contiguous to the lands, one being Ranchi-Tata road (National Highway) and another being Ranchi Purulia Road. He submits that the lands are very near to Ranchi and Namkum Railway Stations. He submits that though from the perusal of the impugned judgment it will show that the Court has relied upon the Exhibit 4, which is stated to be the sale deed, but, actually it is Exhibit 5, which is the sale deed. The sale deed is dated 23.12.2006 and the sale price is Rs.75,000/-, which, if converted to price per decimal, it will come to Rs.37,500/- per decimal. He submits that the Court below relied upon the said sale deed (Exhibit 5) and assessed the correct market price as Rs.37,500/-, but, surprisingly, has ordered that Rs.30,000/- is the correct rate for assessing compensation. He submits that said sale deed also should not have been considered when Exhibit 4, which is the circle rate was available before the Court. He submits that Exhibit 4 has been prepared by the District Collector as per the guidance of Government of Bihar Act, 1995. As per the said circle rate, Thana No.214, Namkum, which is the exact thana of the acquired lands, the rate has been shown as Rs.84,361/- per decimal. In support of his contention, he relied upon two judgments of Hon'ble Supreme Court in the case of Attar Singh and another versus Union of India and Another reported in (2009) 9 SCC 289 and in the case of Jagdish Prasad Verma (Dead) by LRS and others versus State of Madhya Pradesh and Others reported in (2016) 11 SCC 430.

11. Mr. Sanjeev Thakur, learned Standing Counsel appearing on behalf of the State submits that the Court below has rightly assessed the compensation as Rs.30,000/- per decimal. He submits that sale deed, i.e., Exhibit 5 is the basis and correct sale value of the area, which is Rs.37,500/- per decimal. He submits that because of the nature of the lands, said valuation has been fixed. He submits that after applying appropriate deduction, the Court came to the conclusion that value of the lands should be Rs.30,000/- per decimal and thus, assessed the compensation correctly.

12. I have heard the parties and have gone through the records.

13. From the evidence, it is not denied that the lands are next to the highways. It is also not denied that the lands are very near to Namkum and Ranchi Railway Stations. The claimant, by leading evidence, has stated that there are residential houses, army camps, Bazars and factories near the lands, which have been acquired. This fact has also not been controverted by the State. It is also not denied that the lands have been acquired for construction of the over-bridge.

14. Now the question, which will fall for consideration is what will be the correct market value. From the records I find that the Court has heavily relied upon Exhibit 5 (wrongly typed as Exhibit 4 in the impugned judgment), which is sale deed executed on 23.12.2006, just four months before the date of notification. Two decimals of lands have been sold at Rs.75,000/- by virtue of the said sale deed. Another document is Exhibit 4, which is circle rate prevalent in the area. The said document is a government document and prepared by the government itself. While I go through the said Exhibit 4, I find that at Sl.No.8 is the circle rate of Mouza Namkum, Thana No.214. Be it noted that the land, which has been acquired is within the same thana of Namkum. Two rates have been given by the State, one is Rs.54,961/- per decimal, which is for lands next to State roads and another is Rs.84,361/- per decimal, which is for the lands next to the main roads. Admittedly, the lands in question are next to the Main Road and National Highways. This circle rate is fixed by the State and Court can take judicial note of the fact that in respect of transfer of lands and for registering sale deeds, sale value is based on this circle rate, even if the actual sale price is less than the circle rate. Thus, from this document, i.e., Exhibit 4, it is quite clear that the same has fixed the circle rate at Rs.84,361/-. This circle rate has been prepared on 11.05.2007, i.e., before the notification was published in the gazette. Thus, this Court can very well rely upon the said circle rate, which has been fixed by the State itself for valuing the lands. The Hon'ble Supreme Court in the case of Jagdish Prasad Verma (Dead) by LRS and others versus State of Madhya Pradesh and Others reported in (2016) 11 SCC 430 has assessed the market value on the basis of circle rate. Thus, when the circle rate is available and that too which has been fixed prior to publication of notification in gazette, I feel that the rate so fixed should be the correct value of the lands so acquired.

15. Further, while going through the judgment, I find that no reasoning has been given as to how the valuation of the lands have been assessed by the Court below and thus, the finding can be said to be without any reason. Since this is First Appeal, after going through the evidence and the documents, I independently come to the conclusion that the circle rate is the correct rate for determining the market value of the lands as the same is fixed by the Government. I hold that Rs.84,361/-, being the circle rate prevalent, is the correct market price of the lands as the lands are situated just besides the National Highways. Thus, the appellants are entitled to get compensation calculating the price of the acquired lands to be Rs.84,361/- per decimal along with the solatium, interest and additional compensation as provided under the Land Acquisition Act, 1894. Be it noted that that I have not interfered with the

rate of solatium, rate of interest and the extra compensation awarded by the Court below.

16. This appeal is, thus, allowed. Award to be prepared accordingly.