**(2022) 03 OHC CK 0036**

**In the Orissa High Court**

**Case No :** ARBA No. 22 Of 2018

**Sailabala Acharya Competent Authority and Land Acquisition Officer, National High Way No.203**

**Date of Decision :** 08-03-2022

**Acts Referred:**

National High Ways Act, 1956 — Section 3A

**Citation :** (2022) 03 OHC CK 0036

**Hon'ble Judges :** Arindam Sinha, J

**Bench :** Single Bench

**Advocate :** K.K.Mishra

**Final Decision :** Disposed Of

# Judgement

Arindam Sinha, J

1. Mr. Mishra, learned advocate appears on behalf of appellant and submits, market value of the land as on date of publication of notification under section 3-A in National High Ways Act, 1956 was Rs.18,00,000/- per acre but award was at Rs.11,00,000/- per acre. He submits, in impugned judgment dated 19th December, 2017, his client was said as had not filed any evidence before the competent authority regarding eligibility to higher compensation. He refers to annexure-2, being award dated 31st October, 2015, which records his client to have cited documents including registered sale deed dated 10th August, 2009 having consideration therein at Rs.18,00,000/- per acre.

2. He relies on judgment of the Supreme Court in Competent Authority vs. Baranagore Jute Factory, reported in (2005) 13 SCC 477 to submit, there was direction for calculation of compensation as on the date when possession of the land was taken.

3. Mr. Mohanty, learned advocate appearing on behalf of respondent and draws attention to paragraphs 6 and 7 of impugned judgment to submit, the Court below did not find any patent irregularity with the award, to set it aside. He submits, under section 3-A, market value of the land is to be determined as on

 

date of publication of the notice. In this case, date of publication of the notice was 29th November, 2009. The lower Court found, inter alia, land sold at Rs.18,00,000/- per acre was used for hotel purpose, while petitioner's land is barren land. He submits, the Court below did not say appellant had not adduced evidence but said that appellant did not adduce evidence to show that highest market value of adjoining land could be compared with land of petitioner. He then relies on the award, paragraph 7 to submit, the Land Acquisition Officer (LAO) had reported that the sale deed showing value at Rs.18,00,000/- per acre was inflated rate. As per spot examination, inter alia, decision of the Collector was to fix benchmark value at Rs.11,00,000/- per acre for the kisam of land in suit mouza. As such, there was no mistake in fixing the value. He submits further, Baranagore Jute (supra) was correctly distinguished on facts, by the tribunal, as not applicable.

4. Mr. Mishra in reply submits, sale deed showing sale of land at Rs.18,00,000/- per acre was admittedly of adjoining plot in suit mouza. At the time of sale it was land similar to that of his client. The purchaser developed the land by constructing hotel thereon. As such irrelevant material and consideration were made by impugned order. It should be set aside in appeal.

5. It is clear from the award and impugned order that as on date of notification there was existing the sale deed in respect of sale of land in suit mouza at Rs.18,00,000/- per acre, relied upon by appellant in the proceeding. It was taken to account by both, the arbitrator as well as the Court below. While the arbitrator relied on report of LAO to say the sale deed was made at inflated rate and spot examination to yield benchmark value at Rs.11,00,000/- per acre, the Court below considered that land sold at Rs.18,00,000/- per acre was for purpose of hotel and therefore fetched higher value than fair market value of appellant's barren land. In this context a passage from impugned judgment is reproduced below.

"The Collector-cum-Arbitrator has considered two sale deeds from 1.10.2008 to 30.10.2009 i.e. Rs.10,00,000/- per acre and other Rs.18,00,000/- per acre for suit Mouza. Plot No.223 was used for hotel purpose and plot No.27 which is the land of the petitioner is a barren land. Petitioner contends that market value of adjoining land in the year 2009 is Rs.18,00,000/- but petitioner before Competent Authority has not adduced any evidence the highest market value of adjoining land and how the said land is comparable with land of the petitioner. The Arbitrator observed that highest value of land of plot no.223 was used for hotel purpose. This Court is not the appellate authority for determination of market value of land determined by the Competent Authority and Arbitrator-cum-Collector."

6. It does not appear from the award that the arbitrator fixed Rs.11,00,000/- per acre as fair market value by reason of omission of appellant to produce evidence that appellant's land was similar to land, which had been purchased for purpose of hotel. As aforesaid the tribunal fixed fair market value on basis of a report of

LAO and spot inspection. This was not considered by the appellate Court at all. Instead the appellate Court went on its own interpretation regarding appellant having omitted to give evidence, of her land being similar to the land sold for hotel purpose and thereby to have the same value. One of the indices for fixing market value is value in immediate vicinity. Appellant had produced a registered sale deed, predating date of notification, fulfilling requirement of section 3-A. The tribunal disregarded the sale deed on basis of report filed by LAO and spot inspection. There is no indication regarding reasoning of the LAO in saying that the sale deed was at inflated rate. A sale deed between contracting parties regarding sale of land and duly registered cannot be disregarded by a report filed by LAO stating simply that it is at inflated rate. The second consideration of the tribunal was spot inspection. Spot inspection should have revealed a hotel had come up in the vicinity. That should add value to the neighbourhood, on a reasonable spot inspection/assessment. This Court fails to appreciate how spot inspection can be reliable for finding value of the land, disregarding the sale deed in respect of land in suit mouza, sold away.

7. As would appear from extract of impugned judgment, the Court below made the judgment on irrelevant consideration. It was nobody's case that the sale deed at Rs.18,00,000/- per acre was not taken into account on lack of evidence produced by appellant to show that it was similar land. What appears admitted is that the land sold away by that deed was in suit mouza.

8. The authority, has thereby fixed fair market value of land, acquired by it, as on its own. In such situation, the value attributed cannot be called market value. The authority is not a buyer in having initiated with appellant, a negotiation to arrive at a reasonable consideration for purchase of her land. It has acted in invoking powers under the Act, to take away the land and then fix compensation, it thought is fair. This constitutes patent illegality in the award, not noticed by the Court below.

9. The appeal is allowed. Impugned judgment is set aside in appeal. The challenge to the award succeeds. The arbitrator will revisit the question of valuation of appellant's land acquired and pass award within three months from date of communication of this order. Mr. Mishra submits, there be direction for consideration of claim of interest. Mr. Mohanty submits, the statute provides for interest.

10. The appeal is disposed of.

………………………

 