

(2002) 10 OHC CK 0055
In the Orissa High Court
Case No : First Appeal No. 256 of 1997

Sailabala Pradhan

APPELLANT

Vs

Land Acquisition Zone Officer and Others

RESPONDENT

Date of Decision : 09-10-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Land Acquisition Act, 1894 — Section 54

Citation : (2002) 94 CLT 778 : (2002) OLR 753 Supp

Hon'ble Judges : P.K. Misra, J;B. Panigrahi, J

Bench : Division Bench

Advocate : S.K. Padhi, D. Mohapatra and S.K. Mohapatra, for the Appellant; P.K. Choudhury and Sandeep Parida, for Respondents No. 2 to 13, for the Respondent

Judgement

B. Panigrahi, J.—This is an appeal u/s 54 of the Land Acquisition Act filed by one Sailabala Pradhan challenging the judgment and order passed by the learned Civil Judge, Senior Division, Angul in a Land Acquisition Misc. Case No. 144 of 1993 rejecting the appellant's prayer for higher compensation.

2. The appellant and respondents 2 to 13 were the owners of Ac. 08.14 decimals of land of village Luhamunda. Those lands were acquired by Notification No. 469 dated 27.3.1989 for construction of Talcher-Sambalpur Train line. The compensation amount was determined by the Land Acquisition Collector. But the appellant and respondents 2 to 13 questioned the award on the ground of inadequate compensation, Therefore, the matter was referred to the Civil Court for determining the compensation. Although, the matter was referred on 6.5.1993, but neither party took effective steps in the Referral Court, as a result of which the learned Judge did not find any other way than to dismiss the appellant's prayer for higher compensation. Therefore, the appellant has questioned the propriety of the said order.

3. On the date of hearing it is revealed from the order sheet of the learned Referral Court that an application was filed by the objectors to call for certain

documents for determining the value of the trees standing on the acquired land. But such application was rejected. Therefore, since both the parties declined to adduce any evidence, the learned Referral Court confirmed the amount of compensation fixed by the Land Acquisition Collector.

4. Miss Mohapatra, the learned counsel appearing for the appellant has fervently pleaded that the appellant is a poor lady, and could not know the consequence of non-examining the witness in the case as well as her lawyer abstained from taking any steps required for disposal of the case. It is further submitted that same variety of land was acquired in which the compensation amount was fixed at Rs. 28,000/- per acre by the Referral Court in Land Acquisition Misc. Case No. 144 of 1993. In that view of the matter, how the learned Referral Court adopted a different standard while determining the compensation of the land of the appellant. From the order sheet we found that neither party filed any evidence in support of their case. Without any evidence, it was difficult for the Referral Court to determine the compensation.

5. Considering the materials on record it appears that neither the claimants nor the respondent No. 1, the State of Orissa, adduced any oral or documentary evidence in the case. Thus in the aforesaid circumstances, the learned trial Court should have called for the documents from both parties and decide the case particularly in a reference u/s 18 of the Land Acquisition Act.

6. The next question has arisen for our consideration is that in case the order passed by the Referral Court is set aside, other respondents i.e. respondents 2 to 13 should reap the benefit. It is found that the respondents 2 to 13 have never challenged the order passed by the Civil Court.

7. Even though, the respondents 2 to 13 have not filed appeal against the judgment passed by the Referral Court, yet one of the claimants, whose land was the subject matter of acquisition along with others under a single notification, has filed an appeal, and the Referral Court dealt with all those cases in one Misc. Case, their claims too can be considered by the learned Referral Court in course of hearing. Thus in exercise of our power under Rule 33 of Order 41, CPC, we hereby set aside the judgment dated 11.12.1996 and direct the learned Civil Judge, Senior Division, Angul to give adequate and proper opportunity to the claimants and also the State to lead evidence and on the basis of the evidence, so adduced, the learned Referral Court can determine the compensation in respect of Ac. 08.14 decimals of land situated at village Luhamunda. It is made clear that the State Government, if so desire, can file their objection to the reference in the Court below.

8. With the above, the judgment dated 11.12.1996 passed by the learned Civil Judge, Senior Division, Angul in Land Acquisition Misc. Case No. 144 of 1993 is set aside and the appeal is remitted back for fresh disposal in accordance with law.

CH. P.K. Misra, J.

9. I agree