
(2011) 07 PAT CK 0180

In the Patna High Court

Case No : First Appeal Nos. 290 and 291 of 2001

Shyam Nandan Rai

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Citation : (2011) 07 PAT CK 0180

Final Decision : Allowed

Judgement

Mungeshwar Sahoo, J.—The claimant has filed both these appeals against the same judgment and award dated 20.3.2001 passed by the learned Land Acquisition Judge - 4th, Patna in Land Acquisition Case No. 48 of 1986 and 49 of 1986.

2. It appears that in First Appeal No. 290 of 2001 arising out of Land Acquisition Case No. 40 of 1986 3.52 acres of lands and in First Appeal No. 291 of 2001 arising out of Land Acquisition Case No. 49 of 1986 2.06 acres of claimant's lands were acquired by the State of Bihar along with lands of other land holder total measuring 37.67 acres lands for the purpose of scheme for Fish Seed Hatchery Complex cum Fish Seed Nurseries. The land holders claimed enhancement of the compensation and filed applications u/s 18 which was referred to the Land Acquisition Judge. There were about 92 claimants whose lands were acquired measuring 37.67 acres. All these 92 land acquisitions cases were disposed of by this common judgment. It appears that for the acquisition of the present Appellant's land two awards were prepared in two L.A. case i.e. L.A. Case No. 48 of 1986 and 49 of 1986. Therefore, the Appellant has filed these two first appeals.

3. A notification u/s 4 of the Land Acquisition Act was issued on 1.10.1982. The Land Acquisition Officer fixed the market value of the lands acquired at Rs. 28,125/- per acres with respect to 37.30 acres finding that those are Dhanhar lands i.e. agricultural lands and further fixed the market value of the land measuring 36 decimals at Rs. 90,196/- per acre equal to Rs. 2818.62 paise per

kattha finding that 36 decimal is homestead land. One decimal land was found Gair Mazurava land. The claimant filed application u/s 18 of the Land Acquisition Act claiming compensation @ Rs. 20,000/- per kattha and claimed that all the lands involved are homestead land. Other claimants also filed the application claiming that the classification made by the Land Acquisition Judge is baseless.

4. By the impugned judgment the learned Land Acquisition Judge found that without any basis the Land Acquisition Officer classified substantial part of the land as Dhanhar land and only 36 decimal have been held to be homestead land. Considering the evidence on record and various other materials the learned Land Acquisition Judge held that the nature of all the acquired lands are homestead land and, therefore, fixed the market value of the acquired land at Rs. 90,196/- per acre i.e. Rs. 2818.62 paise per kattha for whole of the acquired land. Being dissatisfied with this enhancement the Appellant has filed these two appeals.

5. The learned Counsel for the Appellant submitted that the Land Acquisition Judge should have relied upon the judgment of the Land Acquisition Officer contained in Ext.3 and Ext. 3-A whereby the market value of the land in that case was fixed at Rs. 6060/- per kattha but wrongly did not apply the said judgment on the ground that in those cases the lands were acquired in the year 1984. The learned Counsel further submitted that the learned court below has not considered the potential of the acquired land. The lands involved in Ext.3 and Ext. 3/A were acquired by State of Bihar in WALMI scheme and the present land and the said land are just by the side of each other intervened by only a road. In such view of the matter, at least the learned court below should have taken the judgment as contained in Ext. 3 series as guideline for consideration of the potential of acquired land. The learned Counsel relied upon a decision of the Apex Court in *Udho Dass Vs. State of Haryana and Others*, On these grounds the learned Counsel for the Appellant submitted that the impugned judgment and award be modified and the compensation may be enhanced.

6. On the other hand, the learned G.P.2 appearing on behalf of the State submitted that the judgment as contained in Ext. 3 and 3-A have been considered by the learned Land Acquisition Judge and has rightly not applied the same in the present case because those lands were acquired in the year 1984 whereas the present land has been acquired in the year 1982. The court is required to determine the market value on the date of notification u/s 4 of the Land Acquisition Act. In the facts and circumstances of the present case, the decision cited by the Appellant is not applicable. On these grounds the learned Counsel submitted that the first appeal is liable to be dismissed.

7. In the present case, the only point raised by the Appellant is that the learned court below should have considered potential value of the lands acquired and while considering the potential the learned court below should have considered the judgments Ext.3 and 3-A wherein the value of the lands were fixed at Rs. 6060/- per kattha which is after two years of the acquisition therefore, this is the only point to be decided in this case.

8. From the finding of the learned court below it appears that the lands which were acquired in the scheme of WALMI and the lands of the present case are intervened by a road only i.e. the lands are contiguous to each other. From perusal of the impugned judgment, it appears that the said judgments were discarded only on the ground that the lands were acquired in the year 1984 i.e. the notification was issued on 1.12.1984 Ext. 5. The Land Acquisition Officer in that case fixed the rate of land at Rs. 1062/- per kattha which was enhanced to Rs. 6060/- per kattha. It appears that in that case 38 acres of land was acquired. The learned Counsel for the Appellant submitted that even if the claim of the Appellant at the rate of Rs. 20,000/- per kattha is not accepted then the learned court below should have granted Rs. 6060/- per kattha to which the Appellants are entitled to.

9. In the decision referred to by the Appellant i.e. Udho Dass Vs. State of Haryana and Others, the Hon'ble Apex Court found in that case also that subsequently the lands were acquired in the year 1992 i.e. two years after the acquisition of the lands of the Appellant in the year 1990. The High Court in that case fixed Rs. 135/- per Sq yard for the lands on the left side and Rs. 150 per sq. yard on the right side whereas in the subsequently acquired land of the year 1992 fixed the rate at Rs. 250 per sq. yard. Therefore, the Hon'ble Apex Court held that the award of the year 1992 should have been considered and accordingly, the Apex Court fixed the market value at Rs. 225 per sq. yard. From perusal of the aforesaid judgment of the Apex Court also it appears that the Apex Court did not fix the market value of the lands acquired on the basis of the award for the lands acquired after two years. However, considering various other factors that the lands acquired are situated by the side of G.T. road and just 7 km. away from Delhi and also considering the fact that the area has developed to the great extent and the lands were acquired for the purpose of housing project fixed the market value at the above said rate. In the present case at our hand that is not the case, no doubt the lands acquired in the present case are just by the side of the lands acquired in the WALMI scheme in the year 1984 but it indicates that prior to that acquisition the lands were being used for agricultural purposes. Slowly, thereafter the area are being Urbanized. The lands in the present case were acquired in the year 1982 and thereafter development started. The learned Land Acquisition Judge observed that development was going on and the market rate has increased and considering all these aspect of the matter held that the nature of the lands acquired changed and it became the homestead land. However, the case before the Apex Court was that the lands near the capital of India were acquired and therefore, same principle cannot be applied everywhere. The determination of the market value of the land should be fixed considering the various factors and the facts involved in the said case. The facts of the case before the Apex Court is entirely different and the facts involved in the present case is entirely different. The scheme for which the lands have been acquired are for the purpose of Fishery seed Hatchery cum Fisheries Seed Nurseries which clearly indicates that the lands were used for agricultural

purposes and low land. However, it appears that two years thereafter the contiguous land were acquired in WALMI scheme and by Ext. 3 series the market rate has been fixed at Rs. 6060/- per kattha. The learned court below should have also taken these judgments as guideline for consideration of potential of the land.

10. Considering all the above facts and circumstances of the case, the same rate fixed by the Land Acquisition Judge for the lands acquired in WALMI scheme cannot be the same for the lands acquired in the present land. However, considering the potential of the land in my opinion the just and proper value of the land of the Appellant acquired by the State of Bihar will be Rs. 1,00,000/- per acres. The Appellant is entitled to receive the compensation calculated at this rate in addition to the other statutory benefits. Accordingly, the impugned judgment and award are modified to this extent.

11. In the result, these first appeals are allowed in part and the impugned judgment and award passed in L.A. Case No. 48 and 49 of 1986 are modified to the extent indicated above. There shall no orders as to costs.