

(1996) 09 MP CK 0005
In the Madhya Pradesh High Court
Case No : M.A. No. 45 of 1986

Shyamlal Agrawal

APPELLANT

Vs

Government of India and Another

RESPONDENT

Date of Decision : 30-09-1996

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 13, 13(4), 13(5), 14, 14(2)
Coal Bearing Areas (Acquisition and Development) Rules, 1957 — Rule 7

Citation : (1997) 1 JLI 333

Hon'ble Judges : Usha Shukla, J; S.K. Dubey, J

Bench : Division Bench

Advocate : Ravindra Shrivastava, for the Appellant; K.P. Munshi, for the Respondent

Judgement

S.K. Dubey, J.—This is an appeal u/s 20 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (for short "the Act") against the award, dated 15.10.1985, passed in Reference Case No. 1 of 1981 and 58 of 1982 by Shri Prakash Mehta, the Claims Tribunal (District Judge, Bilaspur) a Part-time Tribunal for Madhya Pradesh.

2. Facts giving rise to this appeal are these: A notification u/s 4(1) of the Act was published in official gazette on 27.12.1963 by the Central Government being notice of its intention to acquire the Appellant's 3.75 acres of land a part of Khasra No. 659/10, situated in village Mohri, P.C. No. 127, Bijuri, Tehsil Sohagpur, District Shahdol. Notification u/s 7(1) was issued on 1.12.1965, a declaration of acquisition u/s 9(1) of the Act was made and published in the official gazette on 11.1.1968 and possession of the land was taken in May 1968. Of the land acquired u/s 9 of the Act, compensation of Rs. 1218.75 paise was assessed u/s 13(5) of the Act by the Central Government for its payment to the Appellant which was accepted by him under protest. The Appellant preferred his claim on 23.7.1968 in proforma wherein he claimed a compensation of Rs. 2,90,000/- for the land acquired and loss of crops at the rate of Rs. 6,000/- per

year till the payment of compensation is not made since 1963 and also the damage caused to the building and trees Rs. 63,000/- and interest on total amount at the rate of 12 per cent per annum till the payment of compensation and the costs. The term of the constituted Tribunal expired on 30th September, 1973 and the Part-time Tribunal was reconstituted by the Central Government for disposal of the claim u/s 14(2) of the Act, the Appellant filed his claim on 29.4.1981 to claim compensation of Rs. 4 lacs. The Respondent Western Coalfields denied the claim and submitted that only 3.75 acres of land a part of Khasra No. 659/10 and not the total area of that Khasra number 14.15 acres was acquired by the Central Government the fair compensation determined as provided u/s 13(5) of the Act was paid to the Appellant.

3. The Appellant in support of his claim examined A.W. 1 Abdul Mazid Ansari, village Patwari, A.W. 2 Jagat Narayan village Agriculture Extension Officer, A.W. 3 Satya Narayan and A.W. 4 Shyamlal, A.W. 2 proved an unregistered sale-deed Ex. A. 15 dated 26.5.1964 for Rs. 480 for the sale of a plot of the area 20x 100" from Khasra No. 659/10 by the Appellant to Lalloolal. Ex.A. 16 dated 29.5.1966 is another sale document for a consideration of Rs. 500/- of land 20 x 100" by the Appellant in favour of one Gopal Prasad from the land of Khasra No. 659/10. A registered sale-ded Ex.A.28 for the piece of land 30 x 50" out of Khasra No. 659/10 was executed on 30.8.1984 for a consideration of Rs. 3,000/-by the Appellant in favour of Prahlad Rai to prove the market value of the land was at the rate of Rs. 2 per sq.ft. Besides Appellant led evidence oral and documentary that the soil of the land is black soil and yields two crops in a year. The Respondents examined N.A.W. 1 A.J. Vargees who stated that fair compensation was calculated on the statement of sales Ex. N.A. 6 based on the information received from the Sub-Registrar of Assurances, Shahdol and Patwari Bijuri. The witness stated that the possession of the land was taken in May 1968 after demarcation on which the buildings were constructed by the Respondent.

4. The Tribunal discarded the documents of sale Exs. A.15 and A.16 being not registered. The evidence of the land giving two crops and the soil being black soil was disbelieved as no khasra document was produced to prove the quality of the land. The Tribunal relied the evidence of NAW 1 for the fair compensation determined on the basis of statement of fair rate of land per acre acquired by N.C.D.C. Ltd. at village Mahuberi Khurd, Tehsil Sohagpur, District Shahdol issued by the Tehsildar Sohagpur and dismissed the claim of the Appellant.

5. Shri Ravindra Shrivastava, learned Counsel for the Appellant contended that because of the acquisition of the part of the land of Khasra damage was caused to the Appellant's land. The land of the Appellant had the productivity of double crops as is proved by A.W. 2 Jagat Narayan, A.W. 3 Satya Narayan and A.W. 4 the Appellant. The Appellant spent huge sum for making the land cultivable. He constructed dam, wire fencing. The land had five Mahua, seven Harra and fifty lakh trees. All the trees were cut by the Respondent as the construction was started itself in 1963 which is evident from the report of Saluja Construction Co.

Ex.P.5-A and P-6-A. The land was yielding double crops which is evident from Khasra produced of the year 1970-71 to 1973-74 Ex.NA 2 and of the year 1974-75 to 1978-79 Ex.NA-3. The Tribunal illegally disbelieved the evidence in respect of sale, though the documents were not registered but the mutation of purchasers had taken place in the revenue records over the land so purchased and the purchasers have constructed their buildings. The sales were not held as not bona fide and to inflate the market value of the land after having knowledge of proposed acquisition. Certificate issued by the Tehsildar on the basis of the statement of sale Ex.D.6 has no evidenciary value. Counsel cited a decision of this Court in case of Collector Raigarh v. Chaturbhuj Panda and Ors. 1964 J LJ 288 : 1964 MPLJ 220. It was submitted that the Tribunal under the Act has to determine amount of compensation which appears it to be just as provided under Sub-section (5) of Section 14. Even assuming that the land was agricultural and that a big area of agricultural land is acquired and that the sale of small plots cannot be taken into consideration for determining the market value of the large area acquired in that case too the Tribunal ought to have taken into consideration the rising trend in the market price particularly when the land had its potentiality of a building site. Counsel relied the decision of the Supreme Court in Rao Narain Singh (dead) by L.R.s. Vs. Union of India, . It was submitted that the land yields two crops in a year multiplier method ought to have been applied for fair determination of market value by capitalisation method. Relying on a decision of Orissa High Court in Government of India Vs. Raja Soubhagya Chandra Dev, , it was submitted that the Tribunal has not recorded a finding as to market price and fair price of compensation of the date of issuance of notification u/s 4(1) of the Act the Tribunal has failed to discharge its duty u/s 13(4) and Section 141(5) and Rule 7 of Coal Bearing Area (Acquisition and Development) Rules, 1957 (for short "Rules") the award be set aside and this Court may award the compensation as claimed.

6. Shri K.P. Munshi, learned Counsel for the Respondent submitted that the land was in jungle (forest). Later improvement of the land has no value. There is no evidence of the two yields in a year on the date and prior to issue of Notification u/s 4(1) of the Act. The so called sales are not registered and are inadmissible in evidence. Such sales do not confer any right, title or interest. The Tribunal has discussed the evidence in details and longish judgment has been written to record finding. It was submitted that the provisions of Section 13 and 14 specify the principles and the manner in which the compensation should be determined and given for acquisition of land, therefore, the aid for determination of compensation on the decision relied on under the Land Acquisition Act, 1894 cannot be taken into account. Counsel cited Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others, . It was also submitted that the claim for loss of future crops is not sustainable as the provisions of Section 13 of the Act are exhaustive on the questions of compensation. The Tribunal constituted under Sub-section (2) of Section 14 is creature of statute which has to make the award u/s 14(5) having regard to the circumstances of each case and to the principles

laid down u/s 13(5) of the Act in respect of the manner in which the compensation has to be determined. The loss of future income from the yields of the land acquired cannot be claimed. A Division Bench decision of Patna High Court in Bokaro and Ramgur Ltd. and Others Vs. Kathara Coal Co. Ltd. and Others, was cited. Lastly, it was submitted that this Court in appeal would not interfere with the assessment of compensation as no mis-application or wrong application of relevant factors or principles for determination of compensation has been pointed out. Counsel cited Food Corporation of India through its District Manager, Faridkot, Punjab and Others Vs. Makhan Singh and Another, .

7. Sections 13 and 14 of the Act specify the principles on which and the manner in which compensation should be determined and given to the person interested who and also the Central Government have to state in writing what in their respective opinion is a fair amount of compensation. We quote Sections 13 and 14, so far as are relevant for the purpose of this appeal.

13. Compensation for prospecting licences ceasing to have effect, rights under mining leases being acquired, etc.-

(1) x x x x

(2) x x x x

(3) x x x x

(4) x x x x (5) Where any land is acquired u/s 9, there shall be paid compensation to the person interested the amount of which shall be determined after taking into consideration-

(a) the market value of the land at the date of the publication of the notification under Sub-section (1) of Section 4, Explanation - The value of any minerals lying in the land shall not be taken into consideration in determining the market value of any land;

(b) the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the taking possession thereof;

(c) the damage, if any, sustained by the person interested, at the time of taking possession of the land, by reason of serving such land from other land;

(d) the damage, if any, sustained by the person interested, at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any other manner, or his earnings;

(e) if, in consequence of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change; and

(f) the damage, if any, bonafide resulting from diminution of the profits of the land between the time of the publication of the notification under Sub-section (1)

of Section 4 and the time of the publication of the declaration under Sub-section (2) of Section 9.

(5-A) In determining the amount of compensation for any land acquired u/s 9, any increase to the value of the other land of the person interested, likely to accrue from the use to which the land acquired will be put shall not be taken into consideration.

(6) xxx xxx xxx

(7) xxx xxx xxx

14. Method of determining compensation-

(1) Where the amount of any compensation payable under this Act can be fixed by agreement, it shall be paid in accordance with such agreement.

(2) Where no such agreement can be reached the Central Government shall constitute a Tribunal consisting of a person who is or has been or is qualified to be Judge of a High Court for the purpose of determining the amount.

(3) The Central Government may in any particular case nominate a person having expert knowledge in mining to assist the Tribunal, and where such nomination is made, the person or persons interested may also nominate any other person for the same purpose.

(4) At the commencement of the proceedings before the Tribunal the Central Government and the person interested shall state what in their respective opinions is a fair amount of compensation.

(5) The Tribunal shall, after hearing the dispute, make an award determining the amount of compensation which appears to it to be just and specify the person or persons to whom the compensation shall be paid; and in making the award the Tribunal shall have regard to the circumstances of each case and to the foregoing provisions of this Act with respect to the manner in which the amount of compensation shall be determined in so far as the said provisions of any of them may be applicable.

(6) xxx xxx xxx

(7) xxx xxx xxx

For determining the compensation procedure which is to be followed by the Tribunal has been laid down in Rule 7:

7. Procedure to be followed by Tribunal-

(1) The Tribunal shall fix a date and place for the hearing of the matter which it is empowered to decide under the Act and shall inform the parties of such date and place accordingly.

(2) On the date so fixed or any other date to which the hearing may be

adjourned, the Central Government and every person interested in the dispute before the Tribunal shall state in writing what in their respective opinions is a fair amount of compensation.

(3) The Tribunal shall afford reasonable opportunity to the parties to adduce such oral and documentary evidence as they desire to adduce and as may be relevant.

(4) The Tribunal shall record the substance of the statement of the parties and the witnesses, if any.

(5) Any person who have been admitted to be interested and who has accepted the payment of compensation under protest may within six weeks of the date of such acceptance prefer an application to the Tribunal for determining the sufficiency of the amount of compensation:

Provided the Tribunal may entertain an application preferred within thirty days after the expiry of the specified period if it is satisfied that the applicant had sufficient cause for not preferring the application within the specified period.

A bare look to Sub-section (4) of Section 14 shows that it requires the Central Government and the person interested to state their respective opinions as to the fair amount of compensation. The Tribunal as is clear from Sub-section (2) of Section 14, is constituted "for the purpose of determining the amount of compensation" in case no agreement is reached between the Central Government and the party claiming compensation. The language of Sub-section (5) of Section 14 is emphatic that the Tribunal shall, after hearing the dispute, make an award determining the amount of compensation which appears to it to be just. Therefore, the purpose for which the Tribunal is constituted can be achieved only when the Tribunal makes an award as required by Sub-section (5) of Section 14 determining the amount of compensation. True, the provisions of Land Acquisition Act for determining the amount of just compensation do not apply. However, the Tribunal is bound to determine compensation on the principles laid down in Section 13(5) of the Act. Clause (a) of Sub-section (5) of Section 13 provides that the market value of land on the date of publication of the notification under Sub-section (1) of Section 4 shall be taken into consideration for determining the compensation. Clauses (b) to (f) of Sub-section (5) of Section 13 speak of the damage sustained by the person interested in relation to crop, tree, severance of the land, adverse affect on the immovable property in any other manner of the person interested or, in consequence of compulsory acquisition the person is required to change his residence the reasonable expenses, if any, incidental to such change and lastly, damage, if any, bonafide resulting from diminution of the profits of the land between the time of the publication of the notification under Sub-section (1) of Section 4 and the time of the publication of the declaration under Sub-section (2) of Section 9.

8. So far as the finding of the Tribunal that the damage by acquisition of land 3.75 acre of Khasra No. 659/10 in between the notification u/s 4(1) issued on 27.12.1963 and of taking of possession in May 1968 under any of the clauses

enumerated in Sub-section (5) of Section 13 has not been proved, does not call for any interference. However, the Tribunal on the evidence adduced committed an error in not determining the amount of compensation on the market value of the land at the date of publication under Sub-section (1) of Section 4 on the ground that no comparable sales of the area in the vicinity to prove the market value were proved.

9. The evidence on behalf of the Respondent for fixing the fair compensation of which no agreement was arrived at and which was accepted under protest by the Appellant, was led by the Respondent. The sale statement Ex.NA.6 prepared on the basis of certificate of the Sub-Registrar and the certificate of the Tehsildar as to fair rate of land per acre, Ex.NA.7 are of no evidenciary value. Such statement of market value made on the basis of sale-deeds in registration office are not admissible in evidence unless the sale-deeds are produced before the Court. The sale-deeds were not in numerous in number so that they could not be produced by the Court or by the witnesses. NAW. 1 is not an expert witness but an employee of the Respondent, therefore, his evidence has no evidenciary value. Moreover, the witness who collected the information from Sub-Registrar Assurances nor the Tehsildar who issued the certificate has been examined. Therefore, in view of the decision of this Court in case of Chaturbhuj Panda (supra) the Tribunal could not have taken into account for determining the compensation the statement of sale and certificate. The bare oral statement of NAW. 1 as to the said documents was inadmissible.

10. The Appellant to prove the market value of the land at the date of the publication of the notification u/s 4(1) examined A.W. 2 Jagat Narain and A.W. 4 the Appellant. The two sales Ex. A.15 dated 26.5.1964 and Ex. A.16 dated 29.5.1966 were proved though the sales were for small plots 20" x 100" from Khasra No. 659/10 and on the basis of such sales mutation had taken place of the purchasers and the buildings have been constructed thereon which facts are not disputed. Legally no title passed to the purchasers but agreement to sell demonstrates the market price of the nearabout area. Though the land was agricultural land but it had the potentiality of buildings sites which cannot be disputed. It is not the case of the Respondents nor the finding recorded by the Tribunal that the agreement of the land and that the two documents were not bonafide. Therefore, these documents demonstrate the price of the land which a willing purchaser would pay and what a willing seller would accept. The agreements to sell are of small area and if that price is taken into consideration that comes about Rs. 16,000/- per acre. However, it is settled that an honest transaction between parties after taking into account the market conditions is the real criterion, only those sales should be relied upon as were genuine sales and indicate proper market value. It is also settled that in determining the increase in potential value, the Court should act on no mathematical formula. The Court has to act on ordinary guess work which is permissible. See: Modi P.R. v. Collector Durg 1975 J.L.J. 595. As the sales of small area cannot be taken into account for the purpose of determining the market value of the large agricultural tract, in the

circumstances, on some guess work and the fact that Rs. 1218.75 paise for the area of the land 3.75 acres is ridiculously low, considering the rising trend in price of the land, in our opinion, Rs. 4,000/- per acre would be proper market value of the land. Accordingly, the Appellant would be entitled to the amount of compensation at the rate of Rs. 4,000/- per acre which to us appears to be just, with interest u/s 15 on the excess sum of Rs. 1,218.75 which the Central Government has stated to be a fair price, at the rate of 5 per cent per annum from 6.9.1973 till such excess amount is paid. The amount shall be calculated and shall be paid to the Appellant by the Respondent within the period of two months from the date of supply of certified copy of the order.

11. In the result, the appeal is partly allowed, award of the Tribunal shall stand substituted as indicated herein above. In the circumstances, the parties shall bear their own cost as incurred.