(1994) 01 OHC CK 0004

In the Orissa High Court

Case No : First Appeal No''s. 121 of 1992 and 47 of 1993

Smt. Diptilata Panigrahi etc. APPELLANT

Vs

Land Acquisition Collector, Balasore etc. RESPONDENT

Date of Decision : 06-01-1994

Acts Referred:
Land Acquisition Act, 1894 — Section 23, 54

Citation : AIR 1995 Ori 294

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : A.C. Panda, A. Mohapatra, Ashok Mukherjee, G. Mukherji and J.P. Choudhyry, for the Appellant; S.C. Ray, General and P.K. Rout, A.S.C., A. Ch. Panda, A. Mohapatra, H.N. Malla and D. Pradhan, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—These two cross-appeals u/s 54 of the Land Acquisition Act, 1894 (hereinafter referred to as ''the Act''), one''by claimant and the other by the Company for whom the land was acquired, are heard together dispending with the preparation of paper books with consent of parties.

2. Land of various owners were acquired for Tyre and Tube Project of the Company in villages Bampeda and Chhanapur near Balasore town. Notification u/s 4(1) of the Act was published in the Orissa Gazette Extraordinary No. 1175 dated 1-9-1986. Revenue village Chhanapur is on the National Highway No. 5 where claimant had 3 acres 50 decimals of land which were acquired.

3. Land Acquisition Officer classified the entire area to be of two categories. 1 acre 80 decimals were held to have better advantages being adjecent to National Highway and the balance 1 acre 70 decimals were treated to have lesser advantages. Accordingly, Land Acquisition Officr offered compensation for 1 acre 80 decimals at the rate of Rs. 50,000/ - per acre and for the balance 1 acre 70 decimals he offered compensation at the rate of Rs. 30,000/- per acre. Claimant

who was demanding compensation at the rate of two lakhs rupees received the compensation under protest requesting for reference to Court for determination of market value. On that basis, Land Acquisition Collector made a reference to Court u/s 19 of the Act.

4. Claimant in a reference u/s 19 of the Act stands in position of plaintiff in the suit. Onus lies on him to prove. that rate at which compensation has been offered is law. On proving the same he is also to prove the prevailing market value of land having similar advantages in the area on the date of publication of notification u/s 4(1) of the Act. To discharge the onus, claimant examined one witness only. In support of the assessment of rate at which compensation was offered, Land Acquisition Officer examined one witness and proved the sale statistics collected. Considering these materials, trial court enhanced market value of land measuring 1 acre 80 decimals adjacent to National Highway from Rs.50,000/- to Rs.70,000/- and of the balance 1 acre 70 decimals from Rs.30,000/- to Rs. 50,000/-per acre. Land Acquisition Officer preferred an appeal u/s 54 of the Act. Claimant neither preferred cross-appeal or cross-objection and remained satisfied with the determination and award of the trial Court. When the appeal was heard by Division Bench, some appellate judgments of this Court were produced in respect of land of other owners in the village acquired for the same purpose under the same notification. It was found that in respect of land which are not adjacent to National Highway, this Court determined market value at Rs. 36,842/- per acre. These previous awards not having been considered by the trial court, award was set aside and reference was remitted back to reconsider the question of market value of both categories of land afresh giving opportunity to parties to adduce further evidence if so advised.

5. After remand, claimant further examined the witness and proved three sale deeds. Neither the Company nor the Land Acquisition Collector adduced any further evidence but the Company cross-examined witness for the claimant. Trial Court referred to decision of this Court in F.A. No. 163 and 214 of 1989 which related to land acquired in village Chhanapur. Considering Exts. 1 to 3 the sale deeds and evidence of claimant, trial court determined market value of land measuring 1 acre 80 decimals near National Highway at Rs. 70,000/ - per acre. It reduced market value of balance 1 acre 70 decimals at Rs. 36,842 per acre. This is grievance of claimant as well as the Company though Land Acquisition Officer has accepted the same.

6. Mr, A. C. Panda, learned counsel for claimant-appellant submitted that trial Court is not correct in ignoring the sale deeds only on the ground that they are in respect of small strips of land. He further submitted that the entire area of 3 acres 50 decimals being in a compact area, Land Acquisition Officer was not correct dividing them to the categories and trial court ought to have held that the entire area of 3 acres 50 decimals have the same market value.

7. Submission of Mr. Panda though attractive have no substance. Before remand, trial court accepted the classification made by Land Acquisition Officer and

determined market value differently. Claimant accepted the classification and did not prefer any appeal. Thus, there is no scope now to find that the entire area is of one category specially at instance of claimant. There is no doubt that claimant was asserting that the entire area has equal advantages and compensation at the same rate should be given. However, he abandoned the same after award was made by trial court.

8. On merit also, Land Acquisition Officer is correct. When a large area measuring more than 3 acres has been acquired, claimant ought to have adduced evidence about the length and breadth of the area to show that length adjacant to National Highway is such that breadth will not make any difference in nature of use. No such evidence is available. In such circumstances principle of belting is applicable. When there is no material to come to conclusion that principle of belting would not be applicable, classification by Land Acquisition Officer has rightly been accepted by trial court.

9. Before remand trial court determined market value of land adjacant to National Highway at Rs. 70,000/- which is also maintained after remand. Claimant who did not assail the rate before remand cannot assail the same any further. If trial court would have reduced the rate, claimant might have grievance. However, Company can make a grievance of the rate since Land Acquisition Officer had made a grievance of the same in appeal against the award before remand as Company is to ultimately pay the same. If Company would have taken part in the reference at the first stage and would not have preferred appeal because Land Acquisition Officer had assailed the same. It could have taken advantage of the same and after remand, appeal at instance of Company is competent. In this case position does not change. Company had not been a party in the reference. It was not a party in the appeal preferred by Land Acquisition Officer. After remand, company applied to be a party. Trial Court permitted it to cross-examine witness for the claimant. Thereafter, its application to be a party which remained undisposed of could not have been rejected. Such rejection can be assailed by the Company in this appeal. It is well known on the principle u/s 105, C.P.C. which is applicable to reference u/s 19 of the Act that an order against which no appeal lies can be assailed in appeal against the award. Therefore, Company is justified in assailing the order of rejection.

10. Mr. Ashok Mukherjee, learned counsel for Company appellant submitted that trial court is not correct in determining market value in respect of 1 acre 80 decimals of land near National Highway at Rupees 70,000/- per acre. Trial Court relied upon sale deed Ext. 1 dated 1-3-1986 in which 7 decimals were purchased for a consideration of Rs. 10,000/-for setting up a petrol pump. Trial Court, however, misread Ext. 1 by stating that rate under Ext. 1 is Rs. 70,000/-per acre. If consideration for 7 decimals is Rs. 10,000/- rate per acre mathematically is more than one lakh rupees per acre being about Rs. 1,42,837/- per acre. But that would not be of any assistance to Company appellant. Situation of 7 decimals of land under Ext. 1 and I acre 80 decimals are near National Highway.

But 1 acre 80 decimals are not contiguous to the 7 decimals in Ext. 1. They are at a distance. If 1 acre 80 decimals are made plots of 7 decimals of each mathematically, there would be 26 plots. But while making plots, owner has to leave space for road and other infrastructure. Usually l/3rd area would thus be utilised. Thus, out of 1 acre 80 decimals 60 decimals are to be deducted. If the land would be of exactly the same advantage price of 1 acre 20 decimals would be about Rs. 1,71,428/-. However, claimant has preferred not to examine the vendor or vendee to find out whether the same is prevailing market rate. When a person gets a licence to set up a petrol pump which is very difficult to obtain, he would not mind paying a much higher price for the land so that he can take advantage of the licence. In such a situation, he would not mind paying a few thousand rupees more. Therefore, taking note of the fact that land acquired is not contiguous to land under Ext. 1, land under Ext. 1 is a small strip and purchased for a petrol pump, I determine market value of 1 acre 80 decimals at Rs. 66,000/- per acre. Rightly, trial court discarded Exts. 2 and 3 which related to Basti lands inside the village. If the same are taken into consideration, the rate fixed by me would also be reasonable.

11. Mr. A. C. Panda, learned counsel for claimant relied upon the decision reported in Food Corporation of India through its District Manager, Faridkot, Punjab and Others Vs. Makhan Singh and Another, and submitted that transaction in respect of a small area was taken into consideration and taking into consideration the lessor advantage of the acquired land which is a large area l/6th was sliced down. Transactions of the small area being one and half year back and being in better advantage position, Supreme Court sliced down the rate by 1/6th. Mr. Panda submitted that in the present case transaction under Ext. 1 being only a few months before and no evidence having been laid by Company or Land Acquisition Officer how the acquired land is of lesser advantage, the same rate should be adopted. I am not able to accept submission of Mr. Panda. Decision of Supreme Court does not lay down any principle why the rate would be sliced down by 1/6th and not l/3rd. 1 have already indicated that higher price has been given for a small strip of land measuring 7 decimals because it was to be used for a petrol pump. Besides the area acquired is not adjacent to the transacted area. Merely because both areas are situated near the National Highway, an inference cannot be drawn that they are of equal advantage. Thus, decision of Supreme Court is to be confined to facts of that case.

12. In view of the aforesaid discussion, I determine market value of 1 acre 80 decimals of acquired land at Rs. 66,000/- per acre.

13. Balance 1 acre 70 decimals stand on a different footing. Trial Court ought not to have relied upon the decision of this Court which is in the maximum a previous award. Decision of this Court ought to have been proved as required under the evidence Act. Land Acquisition Officer or the Company ought to have adduced some evidence that land under the previous award and land in this case are of similar advantages. In spite of opportunity they declined to adduce any

evidence. Claimant further examined the witness and proved that a road passes by the side of 1 acre 70 decimals acquired. There is no evidence if land in the decision relied upon by trial Court had a road by its side. This statement of P.W. 1 has not been effectively cross-examined. When market value of 1 acre 80 decimals was determined by Land Acquisition Officer to be Rs. 50,000/ - per acre, rate of 1 acre 70 decimals was determined at Rs. 30,000/-. When I have determined rate for 1 acre 80 decimals at Rs. 66,000/ - per acre Rs.30,000/- is to be increased also. Small increase of Rs. 36,842/- is not just. Accordingly, I determine the rate at Rs. 42,000/- per acre.

14. It goes without saying that claimant is entitled to admissible statutory benefits under the Act as amended by Act 68 of 1984. Trial Court is directed to make a fresh award u/s 26 of the Act incorporating the market value as determined in this appeal along with statutory benefits. If parties so request, they shall be heard in the matter of admissible statutory benefits.

15. In result, both the appeals are allowed in part. There shall be no order as to costs.