

(2010) 08 PAT CK 0089

In the Patna High Court

Smt. Malati Devi through his L.R. Sri Mahavir Mandal and Others

APPELLANT

Vs

State of Bihar
 The State of Bihar Vs Ganeshi Yadav and Others

RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

Citation : (2010) 08 PAT CK 0089

Final Decision : Dismissed

Judgement

Mungeshwar Sahoo, J.—The State of Bihar is the appellant in First Appeal No. 738 of Mungeshwar Sahoo, J. 1993 whereas the land owners are the appellant in First Appeal No. 759 of 1993. Both these appeals are directed against the judgment dated 5.8.1993 and the award dated 21.8.1993 passed by Sri A.A. Gauri, the learned Land Acquisition Judge, Katihar in Land Acquisition Case No. 7 of 1988. The Land Acquisition Judge has awarded at the rate of Rs. 25, 000/- per acre. Being aggrieved by this award, the State has filed appeal challenging the said award whereas the land holders have filed the appeals claiming three lacs per acre.

2. For the purpose of deciding these appeals, the brief facts may be stated as under that in L.A. Case No. 2/1986-87, 1.48 acres of land belonging to the land owners were acquired by the State of Bihar for the purpose of construction of Katihar Town Protection Bandh known as Koshi Project, Purnea District. Notification u/s 4 of the L.A. Act was published in December 1986 and the claimants received notice on 17.1.1987. The claimants filed application u/s 9 of the L.A. Act claiming the valuation of the acquired land to be Rs. 3 lacs per acre or Rs. 10, 000/- to 15,000/- per Katha at the Lugga of 6 1/2 Quebit. Thereafter, the Land Acquisition Officer prepared award Nos. 1, 2 and 4 to 7 in favour of claimants awarding the compensation at the rate of Rs. 5, 000/- per acre.

3. The claimants thereafter filed application before the Land Acquisition Officer and demanded reference u/s 18 of the Land Acquisition Act. Thereafter, the Land

Acquisition Officer referred the matter to the Land Acquisition Judge u/s 18 of the L.A. Act.

4. According to the claimants, the acquired land is situated under Katihar Municipality Ward No. 1 and is located in the vicinity of Government quarters, District Police Line quarters, B.M.P. quarters, Civil Court, District Jail, Block Development Office, Government Hospitals, Military quarters, Doordarshan Centers, Hari Shankar High School and Middle School, Koshi Project and Kanti Mills, Railway Station etc. Their further case is that the pitch road from Katihar to Kolashi is easily accessible from the acquired land and the other lands in the vicinity have been sold at the rate of Rs. 3 lacs per acre or at the rate of Rs. 10, 000/- to 15, 000/- per Katha at the Lugga of 6 1/2 Quebit before notification u/s 4 of the L.A. Act. In addition to the aforesaid claim, they further claimed the statutory compensation and interest.

5. The State of Bihar appeared but did not file any written statement/rejoinder to the claim of the claimants. However, the State of Bihar cross-examined the witnesses.

6. The claimants to prove their claim of compensation examined five witnesses and also produced documentary evidences. Exhibit 1 is the sale deed dated 22.7.1986 by which 5 Dhurs land was sold for Rs. 5, 000/- in Plot Nos. 2955 and 2956. Likewise exhibit 1(a) is sale deed dated 26.05.1986 by which the mother sold 2 Kathas of land to her daughter for Rs. 2, 000/- in Plot No. 2134. Exhibit 1(b) is another sale deed dated 01.11.1985 by which, 11 Decimals of land was sold for Rs. 25, 000/-.

7. The learned Counsel for the claimants submitted that all the witnesses have stated the value of the land to be Rs. 3 lacs per acre and also these sale deeds proved the value of the land as claimed by the applicant but the learned Land Acquisition Judge has not relied upon these sale deeds. On the other hand, learned AAG-7 submitted that the learned Court below has wrongly enhanced the compensation award by the Land Acquisition Officer because the land acquired are waste land and are not within the Municipal area and moreover, it is situated in the bank of the river and is intervened by a river in between the lands acquired. The learned AAG-7 further submitted that the land was acquired for constructing a Bandh for protecting the town. The sale deeds produced are not relevant for determination of the value of acquired land because some of the lands purchased by sale deed are for residential purpose by the side of road. But the present lands acquired are waste and are not near to the lands sold by the sale deeds. According to the AAG-7, the compensation fixed by the Land Acquisition Officer was sufficient but wrongly the Land Acquisition Judge has enhanced the compensation and therefore, the same is liable to be set aside.

8. Now, let us consider the evidences adduced by the plaintiff. A.W. 1 is one of the claimants has admitted in his evidence at Paragraph 8 that he had purchased 20-22 Bighas of land in the year 1976 for Rs. 21, 000/- only. This 1.48 acres of

land acquired are out of those purchased land. He has also admitted that he had purchased 22 Bighas of land in two plots and in between the two plots, river flows. He has admitted that he purchased the land at the rate of Rs. 1, 000 per Bigha in the year 1976.

9. From perusal of the impugned judgment, it appears that the learned Land Acquisition Judge has also found that the acquired land is not within the Municipal area. The learned court below also found that A.W. 2 is a professional witness. A.W. 3 clearly admits that there was no Municipal survey for Ward No. 1 and he has not seen the lands acquired. The evidence of A.W. 4 and A.W. 5 are contradictory to each other as A.W. 4 said that wheat crop is grown on the acquired land whereas according to the A.W. 5, paddy crops are grown. None of the witnesses have stated that the lands in the vicinity were sold.

10. So far sale deeds are concerned, as stated above, those are for very small area and moreover, so far Exhibit 1 is concerned, the purchaser has his land adjacent to the land purchased by him. Further, it is only for 5 Dhurs. In my opinion, therefore, on the basis of this sale deed, the compensation for the acquired land cannot be calculated. So far Exhibit 1(a) is concerned, the mother sold the land to daughter, therefore, it appears to be a created document just a few months ago for the purpose of higher compensation. The learned court below also expressed the same view regarding this sale deed. So far Exhibit 1(b) is concerned, it appears that in the boundary of the land purchased, there is a P.W.D. road. Therefore, all the lands covered under Exhibit 1, 1(a) and 1(b) are within the Municipal area.

11. The learned Counsel for the land owner claimants submitted that no sale deed regarding the lands sold in the vicinity of the acquired land are available, therefore, the sale deeds produced by the land owners should have been relied upon by the learned Court below. So far this submission is concerned, we have seen above that the lands are within the Municipal area and through the sale deeds, very small area were sold.

12. In a decision reported in Gujarat Industrial Development Corpn. Vs. Narottambhai Morarbhai and Another, the Hon"ble Supreme Court has held that no prudent purchaser would purchase large extent of land on the basis of sale of a small extent of land in the open market. The acid test the court should always adopt in determining market value in the matter of compulsory acquisition would be to eschew feats of imagination, sit in the armchair of a prudent willing purchaser, it should consider whether the willing vendee would offer the rate at which the trial court proposes to determine the compensation.

13. Therefore, as stated above, the sale deeds covers from small areas and therefore, the sale deeds cannot be made the basis for determination of compensation in the present case.

14. As discussed above, the claimant himself has admitted that a river intervenes in between both the plots and moreover, he purchased the same land in the year

1976 for Rs. 1, 000/- per Bigha. The other oral evidences as discussed above contradict each other regarding cultivation of crops. It is well settled principles of law that the burden of proof of market value prevailing as on the date of publication of notification u/s 4(1) of the L.A. Act is always on the claimants.

15. In a decision reported in Hookiyar Singh etc.etc. Vs. Special Land Acquisition Officer, Moradabad and another, the Hon''ble Supreme Court has held that despite the apathy and blatant lapse on the part of the acquiring officer to adduce evidence and also improper or ineffective or lack of interest on the part of the counsel for the State to cross-examine the witnesses on material facts, it is the duty of the Court to carefully scrutinise the evidence and determine just and adequate compensation.

16. As stated above, it was the duty on the part of the claimants to adduce reliable evidence. The Land Acquisition Judge has rightly not relied upon the sale deeds for the reasons stated above. In a recent decision, the Hon''ble Supreme Court in the case of Karnataka Urban Water Supply and Drainage board, etc. Vs. K.S. Gangadharappa and Another etc., has held at Paragraph 8 as follows:

8. In Suresh Kumar v. Town Improvement Trust, in a case under the Madhya Pradesh Town Improvement Trusts Act, 1960 this Court held that the rates paid for small parcels of land do not provide a useful guide for determining the market value of the land acquired. While determining the market value of the land acquired, it has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner. It is an accepted principle as laid down in Vyricherla Narayana Gajapatiraju v. Revenue Divl. Officer that the compensation must be determined by reference to the price which a willing vendor might reasonably expect to receive from the willing purchaser. While considering the market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy it must alike be disregarded; neither must be considered as acting under any compulsion. The value of the land is not to be estimated as its value to the purchaser. But similarly this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded. The wish of a particular purchaser, though not his compulsion may always be taken into consideration for what it is worth. Section 23 of the Act enumerates the matters to be considered in determining compensation. The first criterion to be taken into consideration is the market value of the land on the date of the publication of the notification u/s 4(1). Similarly, Section 24 of the Act enumerates the matters which the court shall not take into consideration in determining the compensation. A safeguard is provided in Section 25 of the Act that the amount of compensation to be awarded by the court shall not be less than the amount awarded by the Collector u/s 11. Value of the potentiality is to be determined on such materials as are available and without indulgence in any fits of imagination. Impracticability of determining the potential value is writ large in almost all cases. There is bound to be some amount of guesswork

involved while determining the potentiality.

17. In view of the above discussions and in view of the well settled principles of law laid down by the Hon"ble Apex Court, in my opinion, the compensation awarded by the learned Land Acquisition Judge is correct and I find no illegality. The Court has considered all these aspects of the matter that the lands acquired are waste land, intervened by river, purchased by the applicant at Rs. 1,000/- per Bigha in 1976 and it is outside Municipal area. I find no illegality in the impugned judgment in award. Accordingly, the finding of the learned Court below is hereby confirmed.

18. So far the submission of the learned AAG-7 to the effect that the award prepared by the Land Acquisition Officer should be restored is concerned, I find no force because the compensation awarded by the Land Acquisition Officer appears to be meager and therefore, the Land Acquisition Judge has rightly enhanced the same.

19. In the result, both the First Appeals filed by the State of Bihar and the claimants are hereby dismissed. In the facts and circumstances of the case, the parties shall bear their own costs.