(2004) 09 JH CK 0026

In the Jharkhand High Court

Case No : A.F.O.D. No''s. 1, 7 and 118 of 1994 (R)

Smt. Prabhawati Devi and Others, Smt. Annapurna Devi and Sachida Nand Lal — APPELLANT

Vs

State of Bihar (Now Jharkhand) — RESPONDENT

Date of Decision : 10-09-2004

Acts Referred:
Bihar Land Acquisition Act, 1894 — Section 4

Citation : (2004) 4 JCR 487

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : Devi Prasad, A.K. Lal, S.N. Lal, M. Kumar and R. Anand, for the Appellant; Shamim Akhtar, SC-II and A.K. Mehta, JC to SC-II, for the Respondent

Final Decision : Dismissed

Judgement

Vikramaditya Prasad, J.—Admittedly by Notification No. 327 II. dated 5.7.1982 u/s 4 of the Bihar Land Acquisition Act (hereinafter referred to as the Act) the lands of the following appellants were acquired by the respondent State of Bihar for construction of industrial estate and taller compensation was awarded by the Collector which are noted below against each of the appellants.

F.A. No, arising out of L.A. Ref.. Name of Claimant Appellant, Award of Collector with date. Area, Class of Land and Khata., HoL. etc.. Compensation by the Collector Claim of claimants

1 of 1994/2 of 1988, Smt. Prabhawati Devi and others. Received Award on 6.11.1989, 13/4.11.1987, 0.55-1/2 Acres. Dhan II Khata No. 116 Lohardaga. Rs. 15,232.24 @ Rs. 14.445 per acre @ 20.00.000/- per acre

7 of 1994/2 of 1988. Smt. Annapurna Devi did not receive the Award though notice served on 6.4.1989. 16/4/11.1987, 0.94 Acres. Dhan II Plot No. 1672,, Khata No. 184 Lohardaga, Rs. 25.798 @ Rs. 14.445 per acre? @ Rs. 15.000/- per decimal

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118 of 1994/8 of 1988. Sachida Nand Lal did not received the award though notice served on 1.4.1989, 10/4.11.1987, 28 Acres. Tand II,, Plot No. 1661,, Khata No.81.. Lohardaga, Rs. 5123 @ Rs. 9630 per acre @ Rs. 10.000/- per decimal

Possession of all the lands taken on 7.4.1989.

2. Objections were filed on 14.12.1987. 23.5.1987 respectively In the aforesaid L.A. Cases. The common objection was (i) the land was situated within Lohardaga Municipal Area (ii) Fit for construction of commercial and residential buildings (iii) Land situated by the side of Ranchi Gumla Main Road Besides being by the side of the land acquired by for agriculture market area (iv) Notified market area existing (v) Agriculture market leased its land for construction of UISCOMAUN @ Rs. 1 lakhs per acre and is area distance of 100-300 meters of acquired lands (iv) within the circle of Lohardaga District the value of Municipal Area Land had gone high. So the potentiality of the land had increased.

3. Besides the above common plea the appellants also took specific pleas to show that the award of Collector is inadequate and unjust. Thus specific case of Prabhawati Devi and others was that at that time of notification u/s 4 of the Act market price of their land was Rs. 2 Lakhs per acre. The claim of Sachida Nand Lal was that his land was up land by the side of PWD road and its price was Rs. 15.000/- per decimal. The claim of Smt. Annapurna Devi was that the price of her land was @ Rs. 10.000 per acre.

4. The respondents-State opposed the claim saying that the land was valued at the rate depending upon the classification of land, fixed by the Government. Besides the Dhan II land was low one not fit for construction of building immediately and it was at a distance of four kilometer from Lohardaga town and the awardee has also been paid statutory benefit.

5. The learned Land Acquisition Court framed the following points for consideration :-

(i) Whether the amount of compensation of acquired land fixed by the learned Collector is in fair, inadequate and excessively loss and not fixed as per market rate at the time of issue of notification u/s 4 of the L.A, Act? If so what were be proper amount of compensation?

(ii) Whether the market rate of acquired rate was much higher than the amount of composition fixed by the Collector?

(iii) Whether the Award prepared by the Collector is fit to be set aside and fresh Award is remained to be prepared?

(iv) Whether the present references are barred in law and not maintainable?

6. The learned Land Acquisition Court considered Exhibit B which is a letter issued by the Divisional Commissioner fixing the rate of lands as per their classification and found that the Award in question were fixed on that rate. He

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also considered the evidence of three claimant witnesses and the sale deeds Exhibit 1 and 1/A and the survey map (Ext. 4). He found that Exts. 1 and 1/A was for a small piece of land executed by one Mohan Lal, Husband of Prabhawati Devi in favour of his brother on 5.7.1982 by which Dhan III land was sold @ of Rs. 15.000/- per decimal. This was executed on the day of notification u/s 4 of the Act.

7. The learned trial Court therefore concluded that unless the rate fixed by the Commissioner (Ext. B) is disproved by genuine transaction, that rate cannot be disregarded. It also found that prior to acquisition land was not developed and populated and as Lohardaga was made a District in the year 1982, the valuation increased thereafter. The BISCOMAUN Salami of one lakh per acre was not accepted for two reasons (i) it was commercial . transaction for a developed market yard (ii) it was made two years after the acquisition in question. The Court found that the claimants have not been able to discharge their onus of proving the price as claimed as also the potential of the land. So he approved the valuation as was fixed by Ext. B and refused to interfere with the Collector''s award.

8. The points for determination, therefore, are as follows :-

(i) Whether the Ext. 1 and Ext. 1/a are bonafide transactions?

(ii) Whether the locality of lands acquired also indicates the potentiality of lands of market price?

(ii) Whether consideration paid to BISCOMOUN is a factor for valuation of market price?

(iii) Whether Ext. B can be the basis for fixing the market value of the land?

9. Point No. 1. Whether the Ext. 1 and Ext. 1/a are bonafide transaction? In support of the claim, the claimants examined 4 witnesses :

AW 1 Sri Govind Mishra. He had proved two documents Ext. 1 and Ext. 1/a. According to this witness admittedly both the sale deeds were executed on the date of notification, u/s 4 of the Act. The venders of the land in both the deeds are Man Mohan Lal Agrawal and Brij Mohan Lal Agrawal. By both the deeds for a consideration of Rs. 4,500/- 3 decimals of land in plot No. 1682 had been sold. The purpose was construction of house. The purchaser of the land is this witness himself and brother of this witness. In the boundary in the east of the land purchased by Ext. 1/a is the house of this witness. Thus. according to these sale deeds on the date of notification the land was sold at the rate of Rs. 1500/- per decimals. Meaning thereby 1.5 lakh per acre. The learned trial Court has rejected these deeds on the ground stated above. Admittedly the seller Man Mohan lal Agrawal is the husband of Smt. Prabhawati Devi and Brij Mohan Lal Agrawal is the husband of St. Sharda Devi, both appellants in F.A. No. 1 of 1994-R. It is in this background that these appellants have claimed the valuation of acquired .land. No other sale deed had been brought either of sale which took

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place some time prior to the date of notification or even within the reasonable approximate time after acquisition, so as to indicate that what was the actual price given by a willing purchaser and accepted by a willing seller. Though there is nothing on record to show that this notification was a motivating factor for executing the deed on the day of its purchase, but it is not a secret that when the acquisition is to be made the news propagates in the locality. Therefore, execution of the deed by none else than the most interested persons i,e., husband of the appellant on that very day cannot be relied on without suspicion particularly when this witness in his cross-examination says that he does not know the rate of land on the day on which Government acquired the land. This witness himself being a purchaser proving the sale deed could have even said that on that day the rate of the land was that which he had paid to the seller. Since he does not know this. there-tore, there will be room for believing that he may not be a bonafide purchaser. The word used in Section 4 of the Act does not mean (lie very day on which acquisition is made. Ii will be sometime approximately in past or some time approximately in future then it can be said that it was a bonafide transaction. Here for the reasons aforesaid the transaction does not appear to be bonafide and, therefore, the learned trial Court rightly rejected the plea of fixing the market price on the basis of Exts. 1 and 1/a. This issue is answered accordingly.

10. Point No. iv : Whether Ext. B can be the basis of fixing the market value of the land? The award that has been prepared clearly shows that the basis of fixing of the market value of the land acquired is this Ext. B. Ext. B is a letter issued by the Divisional Commissioner giving guidelines for fixing the price of the land as per the classification of the land not taking into consideration the exact location, potentiality of the land acquired. Moreover such type of instruction is completely ex parte and most of the time such type of instruction is issued without exact verification of the land acquired under notification for determination of the market price of collector''s award indirectly influencing the decision of the Court. If such an instruction is to be the basis then the purpose of referring the matter to the Court for determining the market price will become meaningless because Court is expected to fix the market price not on such but as per the mandate of Section 23 of the Act. Executive instruction No. 72 issued by the State of also speaks for determination of price as per the market price. It has also been held that in determining the market price the Commissioner of Division has no functionary power under the Act and, thus, the status of a Divisional Commissioner is of an outsider for such a purpose. In Inder Prasad Vs. Union of India, , it lias been held that the market value cannot be based on information given by an out side authority or booklet or directory issued by the Government. For the aforesaid reasons Ext. B could not have been a ground for fixing the price of the land acquired and also it cannot be relied on by the Court u/s 23 of the Act for fixing the price of the land acquired. The learned trial Court has not totally erred in relying on it. This issue is decided accordingly.

11. Point Nos. ii and iii : It is settled principle of law that a potentiality has to be

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proved by a person, who claims it. AW 1 purchased the land by Exts. 1 and 1/a and in that sale deed it is said that it is purchased for the construction of the house but in his evidence he has not stated that he constructed the house thereon after purchase. He was being examined on 29.7.1992 after 7 years of the acquisition but, he himself has not construed the house during 7 years when he purchased the land for construction of house. Therefore, it cannot be said that the land acquired was fit for construction of building at the time of acquisition.

12. AW 2 Man Mohan Lal, the husband of appellant Smt. Prabhawati Devi, said that this land is fit building for construction but as stated above, the purchaser has not constructed any house, though he purchased the same for the purpose of constructing house, AW 3 Sachhidanand Lal appellant in F.A. No. 118 of 1994-R. He claims that his land is situated by the side of Lohardaga Gumla Road main road. In paragraph 3 he has stated that for the last 20 years Lohardaga town has continuously developed as in the year 1972 it had been made Sub-Division and thereafter in the year 1982 it has been converted into a district. AW 4 Ganga Prasad is the husband of Annapurna Devi, appellant in F.A. No. 7 of 1994-R. His case was that his land which was acquired, is situated 100 yards away from Ranchi Lohardaga road. The rest of the claim is same. He has himself claimed the price of land at the rate of Rs. 10.000/- per decimals vide paragraph 2. He has said that by change of time the price of land is increasing speedily.

13. From the aforesaid evidence it is clear that the land of appellant Sachidanand Lal was on the road. the land of appellant Smt. Annapurna Devi is 100 yards away from the road and with regard to the land of appellant Prabhawati Devi and others are concerned, the position has not come that the land was fit for raising building. Though this is evident that in the vicinity of land hospital, market, schools etc. are there and the land is within the municipal area.

14. In face of all these positive factors particularly Lohardaga having been made a Sub-Division in the year 1972 and in the year 1982 a district, the price of the land acquired is claimed to be increased. It is for the appellants to show by producing some bonafide dependable sale deeds of the past years of the acquisition or after years of acquisition so as to show that the rate of the land was speedily increasing. Only saying tat it was speedily Increasing does not serve the purpose because for calculation of rate, the rate of some previous years and after years of acquisition of land has to be considered and in absence of all these materials even assuming that town has developed it is difficult for the Court to agree with rate as claimed by the claimants. By not proving such documents claimants have failed to discharge their obligation. Thus, it is found that definitely the land situated by the side of the road or near by and are also within the municipal area and in the vicinity of market etc. potentiality of land is evidenced on the face of these factors reliance has been placed on Dadu Yogendra Nath Singh and Others Vs. The Collector, Seoni, . In that case claim was made at the rate of Rs. 1500 per acre, whereas award was of Rs. 450/- per acre. The Apex Court considered this very fact that the land was within the

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municipal area etc. and found that nearby land, a piece of land had been sold @ Rs. 1050/- in the year 1964, and therefore, it came to find that Rs. 1250/- would be an appropriate compensation.

15. Now there are documents, which were marked for identification but were not duly proved, by which in the year 1984, 2 Acres of land was allotted for consideration of Rs. 2 lakhs on 5.12.1984 by the Agriculture market to the BISCOMOUN. These documents not duly proved cannot be admitted in evidence. Obviously this is a circumstance to infer that the area was developed which shows the potential of the acquired land but in absence of any genuine sale deed even after the date of acquisition, it is difficult to fix the actual market price. The Apex Court in the case reported in AIR 1988 SC 1682, gave a guideline for determining the market price. It clearly indicates that the genuine instance has to be taken into consideration. Comparable Instance of genuine transactions have to be noticed, balance of plus and minus factor had also been illustrated in the judgment itself has to be considered but what will be done in such a situation when neither any comparable sale statement is coming nor any other reliable document has been brought on the record to show that in fact that has happened in this case. A market price cannot be fixed on hypothetical basis. It must be formed on the basis of some concrete evidence and after application of a prudence mind but even prudence mind cannot be utilized arbitrarily. So even if I agree that the area of the land is under in development process, the land is situated by the side of road or nearby and marketing agriculture area, In absence of the genuine sale deed, comparable statement of the past or the sale deed of the recent subsequent year, brought on record, I do not find any concrete basis for allowing the claims of appellants. Thus, I am constraint not to allow these appeals and to confirm the order of the learned trial Court. Issue Nos. 2 and 3 accordingly decided. Though the equity goes in favour of the appellants-claimants but this Court exercising its first appellate jurisdiction cannot grant any equitable relief. Though Ext. B is not a good document for forming a basis of valuation, but in the circumstances obtaining in these appeals, this is the only one which could be taken aid of. Appeals dismissed on contest. Appeal dismissed.

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