

**(1971) 12 PAT CK 0002**  
**In the Patna High Court**  
**Case No : A.F.O.D. No. 5 of 1965**

Smt. Siawati Kuer

APPELLANT

Vs

The State of Bihar

RESPONDENT

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**Date of Decision :** 14-12-1971

**Acts Referred:**

Land Acquisition Act, 1894 — Section 23(2)

**Citation :** AIR 1972 Patna 294

**Hon'ble Judges :** S. Anwar Ahmad, J

**Bench :** Single Bench

**Advocate :** Ram Babu and Ram Krishna Prasad, for the Appellant; Sushil Kumar Jha, Govt. Pleader No. 2, for the Respondent

**Final Decision :** Allowed

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## Judgement

S. Anwar Ahmad, J.—This appeal arises out of the order of the learned Land Acquisition Judge (Additional Subordinate Judge III, Patna) dated the 30th September, 1964, holding that the amount of compensation awarded to the appellant by the State of Bihar, for the lands acquired by it, was adequate.

2. Plot No. 3389 with an area of 13 decimals and plot No. 3408 with an area of 63 decimals, situate in village Sheonar, P.S. Mokameh, in the district of Patna, were acquired by the State of Bihar for construction of Mokameh Bye Pass Road. The notification u/s 4(1) of the Land Acquisition Act, 1894, for acquisition of the lands, was published on the 12th October, 1960, and possession of the plots was taken by the State on the 24th February, 1961. This was followed by a declaration u/s 6 of the Act on the 33th September, 1961.

3. The amount of compensation fixed by the Land Acquisition Officer for the aforesaid plots of lands comprised as follows:

Price of land ... Rs. 1815.86 P.

Price of trees standing on the land ... Rs. 272.38 P.

Damages ... Rs. 94.32 P.

Interest ... Rs. 43.65 P.

This amount was accepted by the Collector. The matter was later referred to Civil Court u/s 18 of the Act against whose order the present appeal has been preferred.

4. It may be stated here that certain lands of villages Gossaingaon and Mokameh Khas were also acquired by the State of Bihar by the same notification under which the lands of the appellant in village Sheonar were acquired. The Land Acquisition Officer classified the acquired lands of village Sheonar into two categories: Bihar II and Tal lands; and he has found that the two plots in question (3389 and 3408) were Tal lands. The claim put forth by the appellant was that she should be awarded compensation at the rate of Rs. 8,000 per acre. In support of her case the appellant examined her daughter (A.W. 13) in the Court below. She stated that the lands under acquisition were Bhith I lands and the reasonable amount of compensation ought to be at the rate of Rs- 8,000 per acre. She also stated that the annual income from the crops grown over these plots was up to one thousand rupees per bigha but in cross-examination she frankly conceded that she was not in a position to state as to what was the income from these lands within the preceding five years of the date of her deposition in Court nor could she give the details of the various crops grown over them during that period. While the evidence of this witness as to the annual income from the plots under acquisition cannot be relied upon, her evidence as to the quality of the lands being Bhith I was not challenged by the respondent in her cross-examination. The Land Acquisition Judge, however, has disbelieved the evidence of this witness on the point of the lands in question being Bhith on account of the fact that no Kha-tian was filed on behalf of the appellant to substantiate this part of her case; but it appears that plot No. 3388, which is adjacent to one of the plots in question, viz., 3389, has been accepted by the learned Judge to be Bhith land. This finding of plot No. 3388 being Bhith land is supported by the entry in the survey Khatian (exhibit 4/b).

5. A petition under Order 41, Rule -27, Code of Civil Procedure, has been filed in this Court for admitting the certified copy of the Khatian relating to the two plots in question as additional evidence. The submission of learned counsel is that the two plots in question have been shown in that Khatian as Bhith lands. For the reasons recorded in the order sheet, I have rejected that petition of the appellant. The learned Land Acquisition Judge, however, in paragraph 15 of his judgment has held as follows:

"While discussing the amount of compensation in respect, of the lands under acquisition in village Mokameh Khas I have already held above that all the Bhith lands in the other villages are similar and as such they can very well be classified as Bhith class I lands. In this view of the matter, the Bhith lands of this village (Sheonar) also can very well be classified as class I and compensation at the rate

of Rs. 4000/- per acre will be the adequate amount of compensation as has been held to be in respect of Bhith class I lands of village Mokameh Khas."

Accordingly, on the evidence of A.W. 13, no doubt is left in my mind that the lands of the appellant which have been acquired by the respondent are Bhith I lands.

6. I, therefore, hold that the acquired plots, viz., 3389 and 3408, measuring 13 decimals and 63 decimals respectively, are Bhith I lands and the appellant is entitled to compensation at the rate of Rs. 4,000 per acre. She is also entitled to the statutory compensation on the said amount and interest thereon at the rate of six per cent per annum from 24th February, 1961, the date on which the State took over possession of the two plots, until realisation.

7. Mr. Sushil Kumar Jha, on behalf of the State urged that as the appellant has not paid court-fee on the statutory compensation no order in that direction should be passed. Counsel for the appellant, however, placed before me a decision of the Andhra Pradesh High Court in Kesireddy Appala Swamy and Others Vs. Special Tahsildar, Land Acquisition Officer, Central Railway, Vijayawada, . wherein it has been held that no court-fee is payable on the amount of statutory compensation as laid down u/s 23(2) of the Act or on the solatium allowed by the Court. The amount which an owner is required to claim includes neither solatium nor interest, but only compensation for all his interests in that land. Thus, solatium u/s 23(2) of the Land Acquisition Act forms part of neither the claim nor of the award and, consequently, in appeal u/s 54 thereof no court-fee is payable on such amount. In this view of the matter, the appellant need not pay court-fee on the amount of statutory compensation allowed to her.

8. In the result, the appeal is allowed with costs as indicated above.