
(2007) 04 OHC CK 0049
In the Orissa High Court

Special Land Acquisition Officer

APPELLANT

Vs

Bira Chhatar and Another

RESPONDENT

Date of Decision : 12-04-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4

Citation : (2007) CLT 833 Supp : (2007) 2 OLR 91

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.K. Parichha, J.—This is an appeal by the Special Land Acquisition Officer, Lanjigarh Road, Junagarh Rail Link Project, Bhawanipatna (hereinafter called "LAO") against the order passed by the Learned Civil Judge (Sr. Division), Bhawanipatna in M.J.C. No. 54 of 2001 answering a reference u/s 18 of the Land Acquisition Act (in short, "the Act").

2. On the basis of notification u/s 4(1) of the Act, Ac.0.33 decimals of land under holding No 45 and Plot No. 93 of mouza Gobardhanpur in the district of Kalahandi belonging to the claimant respondent No. 1 was acquired for construction of Lanjigarh Road- Junagarh Rail Link Project, as per Government Notification No. 45478 dated 19.9.1997 and declaration No. 50352 dated 22.9.1998. After conducting necessary inquiry the appellant awarded a compensation of Rs. 6871/- in favour of the claimant (respondent No. 1) who received that amount under protest claiming higher compensation. On the prayer of the claimant the matter was referred to learned Civil Judge (Senior Division), Bhawanipatna u/s 18 of the Act for adjudication of the dispute regarding quantum of compensation. Learned Civil Judge (Senior Division), Bhawanipatna received evidence of the parties assessed the value of the acquired land at Rs. 43,0007- and directed compensation accordingly with interest at the rate of 12% per annum on such differential market value from the date of publication of the notification u/s 4(1) of the Land Acquisition Act till the date of award or the date

of taking over possession of the case land whichever is earlier. Challenging the said enhancement the present appeal has been preferred.

3. During pendency of this appeal the Union of India represented by General Manager, East Coast Railway, Chandrasekharapur was permitted to be impleaded as Respondent No. 2. Mr. Pal, appearing for Union of India submits that the award was passed behind the back of respondent No. 2, who is the person to pay the amount of compensation and therefore, the impugned order is unsustainable and non est in the eye of law.

4. Mr. Sangram Das, learned Addl. Standing Counsel challenges the impugned order on the ground that it is based on surmise and conjecture. Learned Counsel appearing for respondent No. 1 supports the impugned order in every respect.

5. During the course of hearing, learned Counsel for all the parties concede that the present matter is squarely covered under the ratio laid down by the apex Court in the case of NTPC Ltd. V. Bihar and Ors. (2004) 12 SCC 96 and the observation of this Court in the case of Special L.A. Officer, Junagarh Rail Link Project Vs. Prabhabati Majhi and Others, .

6. On perusal of the record, it is seen that in fact the present case is covered by the ratio laid down in the above noted cases. So following the same ratio this appeal is disposed of with the direction that the Union of India represented through the East Coast Railways is a "person interested" because ultimately it has to pay the compensation amount for the land acquired. Since the reference Court did not notice such interested person before passing the impugned order in the reference proceeding, the order enhancing the quantum of compensation becomes unsustainable. The impugned order, is accordingly set aside and the matter is remitted back to the reference Court for fresh determination of the quantum of compensation after giving adequate opportunity to the Respondent No. 2 to participate in the proceeding and adduce evidence in support of its plea and also giving opportunity to the Respondent No. 1 to adduce rebuttal evidence. Since the matter is old, the appellant and respondents are directed to appear before the learned Civil Judge (Senior Division), Bhawanipatna in M.J.C. No. 142 of 1997 on 7th May, 2007 to take necessary instruction. The learned Civil Judge is directed to dispose of the M.J.C. No. 54 of 2001 as expeditiously as possible preferably within a period of three months of receipt of this order and the LCR.

7. The appeal is allowed. In the peculiar circumstances, the parties are to bear their own costs.