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(2011) 04 PAT CK 0205

In the Patna High Court

Case No : First Appeal No''s. 643 and 648 of 1985

Sri Vijay Kumar and Shiv Bachan Bhagat APPELLANT

Vs

The State of Bihar RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 4(1), 6, 9

Citation : (2011) 04 PAT CK 0205

Hon'ble Judges : Prakash Chandra Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Chandra Verma, J.—These appeals have been filed against the order dated 27th July, 1985 passed by 1st Addl. District Judge, Gaya in Land Acquisition Case Nos. 41 of 1982/1 of 1983 and 56 of 1982/65 of 1983.

2. The facts of the case are for the construction of a housing colony at Village Mustafavad in the vicinity of Gaya town under the housing scheme of the Bihar State Housing Board, the State Govt. proposed to acquire 86.325 acres land at the said village. Those lands were of dhanhar as well as bhit nature. A notification u/s 4(1) of the Land Acquisition Act was published on 05.12.1974 and a declaration u/s 6 was published on 01.07.1975. Objections were invited u/s 9 of the Act by 25.08.1975. The land acquisition Department obtained sale figures. From the local registration office in respect of transfers of lands at the said village during the period of proceeding three years. The Land Acquisition Officer held local inspection of those lands and after taking into consideration several sale figures, he chose a transaction showing transfer of a land which was also the subject matter of acquisition, sold in 1973 at the rate of 32,331/- per acre. As the said piece of land was of dhanhar nature, he fixed the market price of all the dhanhar lands proposed to be acquired at the rate of Rs. 32,340/- per acre. For the bhit lands he recommended the rate of Rs. 21,560/- per acre. The learned Collector accepted those rates and made awards in respect of the lands

of different owners. Under the scheme an area of 70 decimals in plot Nos. 36 and 65 decimals in plot No. 39 totaling 1 acre 35 decimals belonging to Laxmi Narayan Roy, the applicant in L.A. Case No. 41/1 of 1982-83 had been acquired. Therefore, as award No. 29 dated 11.12.1980 for Rs. 50,207=85 (including additional compensation at the rate of 15% of the market price) was prepared and the said applicant received payment thereof on 22.12.1980 under protest. An area of 78 decimals in plot No. 42 belonging to the applicant in L.A. Case No. 56/65 of 1982-83, namely, Sheo Bhagat had been acquired. Therefore, award No. 35 dated 11.12.1980 for Rs. 29,008=98, including additional compensation had been prepared and the payment was received under protest on 23.12.1980. Similarly, an award No. 46 dated 11.12.1980 for Rs. 14,132=58 including additional compensation was prepared in the name of Musan Yadav, the applicant in L.A. Case No. 71 of 17 of 1982-83, as the land of his plot bearing No. 52 measuring 38 decimals had also been acquired. He also received payment under protest. The date of his receiving the payment is not disclosed. The possession of those lands was taken on 08.03.81.

3. Aggrieved by the insufficiency of the compensation awarded to them the above named awardees filed separate petition u/s 18 of the Land Acquisition Act for reference to the Court claiming higher compensation. The contention of the applicants in I.A. Case No. 41/1 of 1982/83 and 56/65 of 1982/83 (the contents of whose petitions are identical in all respects) is that the amount of compensation awarded to them is miserably low. Their lands were very fertile lying under municipal area producing three crops a year, namely, paddy, onion and maize at the rate of 30 mounds, 160 mounds and 20 mounds per acre respectively. The price of those produce was about Rs. 5700/- per acre. After deducting the cost of the production they used to derive net income from their lands at the rate of Rs. 4560/- per acre every year. Besides, being situated within municipal area, those lands were fit for construction of houses. At the time of the publication of notice u/s 4(1) of the Land Acquisition Act the market price of such lands was, at least, at the rate of Rs. 10,000/- should have awarded compensation at such rate, besides compensation at the rate of Rs. 9,000/- per kathas on account of the increase in the potential value of those lands. They have also claimed compensation at the rate of Rs. 32,000/- per acre on account of damage to their standing crops at the time of measurement, demarcation and taking possession of those lands.

4. The case of the applicant in L.A. Case No. 71/17 of 1982/83 is bit more exaggerated, and therefore, slightly different from those of the other two applicants. His contention is that his land is situated adjacent to Anugrahpuri Colony within Gaya Municipality suitable for construction of houses. He used to produce all kinds of vegetables, like cauliflower and brinjal etc. the sale proceeds of which amounted to Rs. 10,000/- per acre. As the land was situated in the vicinity of Anugrahpuri Colony, fit for residential site, its minimum market price at the time of the notification u/s 4(1) was Rs. 15,000/- per Kathas, or Rs. 4,50,000/- per acre. Hence, he has claimed compensation at that rate. Besides,

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he has claimed compensation at the rate of Rs. 12,000/- per kathas on account of potential value, besides compensation for damage to standing crops at the time of measurement, demarcation and taking possession at the rate Rs. 15,000/- per acre. Over and above the applicants in all the references have claimed statutory additional compensation at the rate of 15% of the total market price of their lands as also interest at the rate of Rs. 7.5 per cent per annum for the unexplained delay of six years in making the award by the collector.

5. From perusal of the impugned award it is clear that learned Addl. District Judge has rightly relied on the exemplar Ext-A which is a sale-deed dated 10.04.1973, while the Appellants are relying on Ext-1 which is a sale-deed of 1972. Both these exhibits have been discussed by the learned Reference Court in detail and has given cogent reason that the Ext-1 was only for one Katha and that is for small portion of land. The sale-deed executed contained in Ext-1 was executed in favour of the vendee for the purpose of construction of house. Therefore, it appears that the higher rate was settled between the parties while the sale-deed contained in Ext-A is of the year 1973 is of a larger area and was purchased for the same purpose and it was being used by the vendee. Therefore, the learned Reference Court has rightly relied upon exemplar contained in Ext-A and had rightly determined the rate of compensation payable to the Appellant.

6. Since the appeal is pending, therefore the Appellants are entitled to the benefit of the amended provisions of the Land Acquisition Act on account of pendency of the appeal and for payment of compensation at the rate determined by the Reference Court. This Court does not find any error in the judgment; therefore, appeal is devoid of merit.

7. Subject to observation made above, this appeal is dismissed.

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