

(1963) 12 PAT CK 0007

In the Patna High Court

Case No : Appeals from Original Decree No"s. 310 to 366 and 368 to 380 of 1961

State of Bihar

APPELLANT

Vs

Jehal Mahto and Others

RESPONDENT

Date of Decision : 06-12-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Land Acquisition Act, 1894 — Section 18, 25(2), 9

Citation : AIR 1964 Patna 207

Hon'ble Judges : U.N. Sinha, J;S.N.P. Singh, J

Bench : Division Bench

Advocate : K.D. Chatterjee, Govt. Pleader and Chuni Lal, for the Appellant; J.C. Sinha and Rajendra Prasad, in F.A. Nos. 312 to 323, 325, 326, 328 to 332, 332 334, 336, 337, 338 to 340, 343 to 366, 368, 370, to 377, 379 and 380 of 1961 and G.S. Prasad, in F.A. Nos. 310, 325, 327, 333, 335, 338, 341, 369 and 378 of 1961, for the Respondent

Final Decision : Dismissed

Judgement

U. N. Sinha, J.—This batch consists of seventy appeals filed by the State of Bihar. In forty-four of these appeals, cross-objections have been preferred by the respondents. These appeals and cross-objections are directed against an order passed by the Land Acquisition Judge on the 21st of April, 1961 in references made by the Collector u/s 18 of the Land Acquisition Act. It may be mentioned here that there were seventy-one references "before the Civil Court, and seventy-one appeals had originally been filed in this Court, out of which, one appeal, numbered as First Appeal No. 367 of 1961, has gone out of the list for certain defects. The facts, shortly speaking, are as follows. 59.31 acres of land had been acquired by the State for the sub-divisional agricultural farm at Biharshariff under the Land Acquisition Act. The area covered by the references came to 21.60 acres only. The notification u/s 4 of the Act was published on the 21st of March, 1956. Possession was, however, taken u/s 17 of the Act on the 15th of

April 10, 57. The Land Acquisition Collector awarded compensation to the occupiers of the agricultural lands at the rate of Rs. 770/- per acre. The lands were treated as Class TT "Dhanhar lands. Some compensation for trees was also allowed. The awardees filed objections u/s 18 of the Act and hence the references arose.

2. Before the learned Judge, the awardees "in most of the cases claimed compensation at the rate of Rs. 200/- to Rs. 400/- per katha and some claimed compensation even at higher rates. The learned Judge held that there was no satisfactory evidence regarding the annual income from the lands acquired, except the oral and uncorroborated testimony of the claimants, and, therefore, that evidence could not be relied upon for ascertaining the market value of the property. Then, the learned Judge proceeded to value the properties upon the footing of certain transactions with respect to the lands in the neighbourhood. In that context, reliance was placed before the learned Land Acquisition Judge by the State on three sale deeds (Exts. F, F/1) and F/2). On behalf of the awardees-claimants, several documents were relied upon, including a sale deed marked as Ext. 2. The learned Judge has held that the three sale deeds relied upon on behalf of the State were not suitable deeds for the purpose of ascertaining the market value of the acquired lands. From the documents relied upon by the claimants, the learned Judge has held that Ext. 2, the sale deed dated the 30th January, 1956, furnished sufficient data for arriving at the market value of the acquired lands. It has thus been held that the claimants would be entitled to compensation according to the rate mentioned in Ext. 2. By a slight error of calculation, the learned Judge has held that the sale rate from Ext" 2 comes to about Rs. 2,400/- per acre. This figure should be, on a proper calculation, Rs. 2,500/- per acre. According to the learned Judge, moreover the lands acquired in this case could not be said to fall under class IT Dhanhar lands, but that they should be classified as class I land. Thus, the compensation regarding the lands has been, determined upon Ext. 2 alone. It appears that an objection was taken before the learned Judge, on behalf of the State, u/s 25 of the Land Acquisition Act to the effect that those awardees who had not filed petitions of claim before the Land Acquisition Officer u/s 9 of the Act were not entitled to ask the learned Judge to enhance their compensation beyond the amounts awarded by the Collector u/s 11 of the Act. This contention has been rejected by the learned Judge on the ground that when a reference has been made by the Collector to the Civil Court, such an objection was not entertainable by Court. Reliance was placed on the decision in *Sri Venkateswaraswami Varu of Bezwada and Another Vs. The Sub-Collector and Another*, .

3. In these appeals, the learned Government Pleader has contended that the market value of the acquired lands ought to have been ascertained on the basis of Exts. F, F(i) and F(2) and that the reasonings given by the learned Judge for not taking these documents into consideration are wrong. It is then urged that Ext. 2 should not have been considered as the basis for valuing the acquired lands, because there are certain indications in the document itself which must

lead to the conclusion that the purchaser, who was the owner of the contiguous land, paid a price for the acquisition of the land under Ext. 2, which did not represent its true value. It is, therefore, argued that the rate of compensation awarded by the Collector was adequate. On behalf of the cross-objectors and on behalf of the respondents who have not filed any cross-objection, it is argued that the learned Land Acquisition Judge was right in not relying upon Exts. F series, although some of his reasonings may not be quite accurate. It is then urged on behalf of the cross-objectors that the learned Judge should have taken into consideration not only" Ext. 2 but also two other documents, mentioned by the learned Judge himself, namely, Ext. 6(a), a rehan deed dated the 20th March, 1956 and Ext. 6(b), another rehan deed dated the 14th of February, 1955. It is further argued that some sale deeds even of the year 1953 should be taken into consideration in these cases for ascertaining the market value, because these documents will also indicate that the lands in the vicinity have consistently been dealt with at high figures, indicating them to be valuable lands. Special emphasis has been put upon two sale deeds-Ext. 2(b) dated the 10th January, 1953 and Ext. 2(a) dated the 1st July, 1953. It is urged that if the documents relied upon by the claimants, namely, Exts. 2, 2(a), 2(b), 6(a), 6(b), at least, are taken into consideration in these cases, the rate of compensation would go up considerably. Upon the question raised u/s 25 of the Act, it is argued on behalf of the respondents that the actual bar that was urged before the Land Acquisition Judge is no more available to the appellants, in view of the interpretation put upon Section 25 of the Act by this Court in *State of Bihar Vs. Anant Singh and Others*, . All the contentions raised u/s 25 of the Act need not be stated here, as they will be considered at a later stage of the judgment. I will proceed first to consider the market value of the acquired lands as urged by the Counsel for the parties. (His Lordship then discussed the evidence in paras 4 to 10 and proceeded:) I would, " therefore, hold that there is no merit in the appeals so far as the market value of the Acquired lands is concerned. It is not possible to hold that the lands should be valued on the footing of Exts. F series only. The cross objection must succeed to the extent indicated above. That is to say, the compensation to be awarded to the cross-objectors regarding the lands acquired will be on the basis of Rs. 3,000/- per acre.

11. Mr. G. S. Prasad appearing for the respondents in nine first appeals has submitted that, although his clients have not filed cross-objections, they ought to get the benefit of the conclusions arrived at in favour of the cross-objectors, and that the compensation to be awarded to these respondents should also be at the rate of Rs. 3,000/-per acre for the lands acquired. It is urged that all the land acquisition references arose out of same proceeding and the cross-objections filed in this Court regarding the market value of the property go to the root of the case and reliefs ought to be given to these respondents as well, although they have not filed cross-objections, if the cross-objections succeed to any extent. Reliance is placed on Order 41, Rule 33 of the Code of Civil Procedure, and upon a decision of the Federal Court in the case of AIR 1949 106 (Federal

Court) , I do not, however, think that the argument advanced by Mr. Prasad is valid. So far as the appeals in which Mr. Prasad appeared (First Appeals Nos. 310, 325, 327. 333, 335. 338, 341, 369 and 378), the contest is between the State, who is the appellant in each case and the particular claimants, who are the respondents. It is not possible to hold that these respondents can have the compensation awarded to them increased, in view of the conclusions in the cross-objections, if these appeals by the State are going to be dismissed against the respondents, on the ground that the appellant has failed to show why the market value of the acquired lands, arrived at by the learned Special Land Acquisition Judge, should be decreased. The other appeals filed by the State against the other respondents are quite independent and separate appeals, in which some respondents have filed cross-objections and some have not. In my opinion, the decision of their Lordships of the Federal Court, AIR 1949 106 (Federal Court) , is entirely distinguishable on its facts. In that case, there was one decree which was the subject-matter of appeal, and it was held that Order 41, Rule 33 of the Code of Civil Procedure, was attracted on its facts. I am, therefore, not in a position to accept the contention of Mr. Prasad that under Order 41, Rule 33 of the Code of Civil Procedure, the compensation awarded to his clients should be increased, even if the appeals by the State fail. (His Lordship then again discussed the evidence in para 12:)

13. The contention raised u/s 25 of the Land Acquisition Act now falls for consideration. It may be mentioned that the learned Special Land Acquisition Judge was in error in holding that after the references had been made by the Collector to the Civil Court, the bar, if any, u/s 25 of the Act cannot be raised, I will, therefore, proceed on the materials on record for a consideration of the objection raised u/s 25 of the Act it will appear from the judgment of the learned Judge that the objection that had been taken before him was that as all the awardees had not filed claim petitions before the Land Acquisition Officer, u/s 9, the amounts awarded by the Collector to those persons who had not filed claim petitions, could not be increased by the Land Acquisition Judge. The grounds of appeal in this Court are similar. It is stated in the ground No. 1 of the memoranda that as several of the claimants had not filed any claim before the Land Acquisition officer u/s 9, they were not entitled to ask for any increase in the amount of their compensation. Learned counsel for the cross-objectors has rightly argued that an objection under S. 25 of the Act, in the way as it was raised before the Land Acquisition Judge, can no longer be raised, in view of the interpretation put upon Section 25 of the Act by this Court in F. A. No. 287 of 1956 and analogous appeals; D/- 22-8-1963 : (State of Bihar Vs. Anant Singh and Others,). It has been held by this Court that the bar u/s 25(2) of the Act can be raised when the applicant has not made or has refused to make any claim before the Collector, and it is not sufficient to prove only that the applicant had not filed a written claim or written objection, -after receiving notice u/s 9 of the Act. In view of the decision of this Court mentioned above, the learned Government Pleader has urged that in several of the appeals in this Court, the

claimants have failed to prove that they had made any claim whatsoever before the Collector. It is contended that in several appeals, it will appear that the claimants had not filed any claim or objection in writing before the Land Acquisition Officer, and these claimants have not proved, otherwise, that they had made any other kind of claim. It is argued that it was for the claimants-respondents in these appeals (First Appeals Nos. 317, 322, 324, 344, 345, 349-357, 359, 365, 372 and 375) to prove that they had made any claim before the Land Acquisition Officer, assuming that they had received notice u/s 9 of the Act, so that the Land Acquisition Judge could have awarded compensation in their favour exceeding the amounts awarded by the Land Acquisition Officer.

In my opinion, it is not possible to uphold this contention and hold that it was for the claimants to prove before the learned Judge that they had made claims before the Land Acquisition Officer, so that they could ask the Civil Court to increase the compensations awarded in their favour. The materials on the record are not sufficient for a conclusion that these claimants-respondents had not made any claims before the Land Acquisition Officer. So far as oral evidence is concerned, there is no indication as to whether these claimants had or had not appeared before the Land Acquisition Officer. In that view of the matter, the learned Government Pleader has urged that the ordersheet of the Land Acquisition Officer does not mention the names of these claimants as the persons who had appeared before him and, therefore, it must be held that these claimants had not appeared before the Land Acquisition Officer. As there are no objections in writing on behalf of these claimants, it is contended that Section 25(2) of the Act is attracted and the compensation awarded by the Land Acquisition Officer could not have been increased by the learned Judge. No doubt, the oral evidence adduced by the parties is completely silent as to whether these claimants had or had not appeared before the Land Acquisition Officer at all, but from that alone it cannot be presumed as a matter of fact that they had not. The part of the ordersheet of the Land Acquisition officer where he has dealt with certain individual cases does not appear to be exhaustive. On the contrary, order No. 3 dated the 15th of March, 1958, states that notices u/s 9 of the Land Acquisition Act had been issued to the interested persons, whose claims were heard by the Land Acquisition Officer u/s 11 of the Act. Reading this order, as a whole it appears that the Land Acquisition Officer had heard all the parties to whom notices u/s 9 of the Act had been issued. I am assuming for the purpose of this decision that the notices u/s 9 of the Act had not only been issued, but were served, although there is no direct evidence on the point of service. But even on this assumption, it is not possible to hold that any of the claimants-respondents of these particular appeals had never appeared before the Land Acquisition Officer placing their claims u/s 9 of the Act. It is, therefore, not possible to accept the contention of the learned Government Pleader based on Section 25(2) of the Act, for holding that the Land Acquisition Judge could not have increased the amount of compensation awarded in favour of the claimants-respondents of these particular appeals. The bar raised u/s 25 of the Land

Acquisition Act must, therefore, fail.

14. I have indicated above, that the Land Acquisition Judge had fixed the market value of the land acquired at Rs. 2400 / - per acre, basing his conclusions on Ext. 2. It appears that the learned Judge was in error in concluding that Ext. 2 indicated the sale rate at Rs. 2400/- per acre. It is not disputed in this Court that according to Ext. 2, the sale rate should have been at Rs. 2500 / - per acre. In those cases in which cross-objections have not been filed, apparently injustice will be done to the claimants, if the compensation awarded to them is calculated at Rs. 2400/- per acre, which figure was arrived at inadvertently. These claimants will, therefore, be at liberty to approach the learned Judge to correct the error in calculation, which has been discovered in course of the argument in this Court, and if they do apply, it will, be open to the learned Judge to consider this inadvertent mistake and to grant relief in accordance with law.

15. All the appeals filed by the State of Bihar are, therefore held to be without any merit and they are dismissed with costs. All the cross-objections are allowed, to the extent indicated above, with proportionate costs. The cross-objectors who are succeeding to the extent mentioned above, will be entitled to statutory compensation and interest at 6 per cent per annum under Sections 23 and 34 of the Land Acquisition Act, respectively.

S.N.P. Singh, J.

16. I agree.