(2007) 08 JH CK 0009

In the Jharkhand High Court

State of Bihar (Now Jharkhand) APPELLANT

Vs

Arun Kumar Saraff and Smt. Sukmini Saraff RESPONDENT

Date of Decision : 10-08-2007

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 23, 4

Citation : (2007) 4 JCR 148

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Both these appeals are directed against the common judgment dated 23.4.1998 and its corresponding award dated 25.5.1998 passed by the Land Acquisition Judge, Koderma in Land Reference Case Nos. 10 of 1998 and 11 of 1998.

2. By the impugned judgment, the Land Acquisition Judge has awarded the compensation to the claimant/respondent for acquisition of their lands at the rate of Rs. 2461.53 per decimal besides solatium at the rate of 30% and further 12% in addition to the market value of the land acquired.

3. By notification No. 169 dated 18.3.1982 published in the Bihar Gazette on 1.4.1982 u/s 4(1) of the Land Acquisition Act, land measuring 12 decimals within Khata No. 15 plot No. 1937 of village Asna within P.S. Koderma, belonging to the, applicant/respondent Rukmini Saraff, was sought to be acquired by the Government for the purposes of construction of Koderma Bye-pass National Highway. Likewise, by the same notification, land measuring 22 decimals within plot No. 2042 Khata No. 35 of village Asna within P.S. Koderma and another piece of land measuring 3 decimals in plot No. 1932 (2032) belonging to applicant/respondent Arun Kumar Saraff was also sought to be acquired for the same purposes of constructing National Highway. Despite objection of the applicants, lands of the applicants were acquired by the Land Acquisition Officer

who by his award dated 23.9.1996 awarded a total amount of Rs. 19,967.38 as compensation for 12 decimals of land belonging to the applicant Rukmini Saraff. Likewise, by the award of the same date, the Land Acquisition Officer had assessed a sum of Rs. 40,676.31 as compensation payable in respect of 22 decimals of land within plot No. 2042 belonging to the applicant/respondent Arun Kumar Saraff and for the land measuring 3 decimals within plot No. 1932 (2032), an amount of Rs. 4,991.84 was assessed as compensation and the applicants were called upon to receive the amount of compensation. The award in respect of 3 decimals of land within plot No. 1932 (2032) amounting to Rs. 4991.84 was however prepared in the joint names of Additional Collector, Hazaribagh and applicant Arun Kumar Saraff.

The applicants being not satisfied with the amount of compensation assessed, had submitted their objections praying for reference of their dispute for adjudication u/s 18 of the Land Acquisition Act. The dispute was referred thereafter to the Land Acquisition Judge which was registered as L.R. Case No. 10 of 1988 with reference to applicant Rukmini Saraff and L.R. Case No. 11 of 1988 with reference to applicant Arun Kumar Saraff. In the proceeding before the Land Acquisition Judge, evidence was adduced on behalf of the applicants as also on behalf of the State and after considering the evidences, the learned Land Acquisition Judge recorded its finding vide the impugned judgment, whereby the amount of compensation was enhanced to Rs. 2,461.53 per decimal of the land, from the earlier amount of Rs. 904.32 per decimal, as was assessed by the Land Acquisition Officer.

4. Being aggrieved with the enhancement of compensation as made by the learned Court below, the appellant State of Bihar has filed the instant appeals.

5. The common ground advanced by the appellant in both these appeals is that the learned Court below has erred in relying upon the oral and documentary evidence adduced on behalf of the applicants/respondents without critically analysing the evidences. It is also claimed that the learned Court below has failed to determine the market value of the lands acquired with due regard to the existing condition of the land on the date of notification issued u/s 4 of the Act. Fault has also been found in the impugned judgment on the ground that the learned Court below has wrongly relied upon Ext. 1/A for assessing the market value of the land and also failed to consider that the lands indicated in the sale-deed (Ext.-1A) referred to, small pieces of land measuring 4 and 1/2 decimals and as such, price paid for the small pieces of land should not have been taken as a guide for determining the price of the vast area of the acquired lands. It is also claimed that the learned Court below has wrongly refused to accept the rate report (Ext.-B) as admissible piece of evidence. It has also been pleaded that the Executive Engineer, National Highway, Barhi, in whose favour the lands were acquired by the District Land Acquisition Officer, Hazaribagh, was necessary party to the proceedings and in absence of impleading him as necessary party, Reference Case was itself bad and not tenable.

6. Respondent/applicants have countered the grounds as advanced by the appellant, stating that the learned Court below has recorded its finding with regard to the market value of the land on the basis of the evidences adduced in the proceedings including the "sale-deeds of the land situated adjacent to the lands acquired in this case and has placed reliance upon recommendation made by the Land Acquisition Department itself with regard to the amount of compensation per decimal of land which could be payable and as such, there is no illegality or infirmity in the findings recorded in the judgment of the learned Court below. Further submission on behalf of the respondent Arun Kumar Saraff is that the land measuring 3 decimal in plot No. 1932 (2032) which was acquired in this case, was a part of the larger area purchased by him under registered sale-deed No. 4052 in the year 1969 from one Rautmal Surana and he has been paying rent in respect of the said land. This fact was verified by the Circle Officer, Koderma, who had affirmed the same in his verification report submitted in the Land Acquisition Case No. 11/77-78 and the Additional Land Acquisition Officer, Hazaribagh had declared that 3 decimals of land within plot No. 1932 (2032) was legally acquired by the applicant Arun Kumar Saraff and the name of Arun Kumar Saraff has been duly mutated in the Government Revenue Records recognizing him as raiyat in respect of the said land.

Respondents have further stated that the acquired lands were located within the heart of the town and they were homestead lands adjacent to the National Highway and there were several house structures existing on the adjacent land situated hardly 25 meters away from the acquired lands and thus, the acquired lands had potential for commercial value. Respondents add further that the two sale-deeds (Exts.-1 and 1/A) which were registered much prior to the date of notification u/s 4 of the Act in respect of the lands in the present case, had fetched the value of more than Rs. 3,500/- per decimal and the respondents were in fact entitled to greater amount than what was awarded by the learned Court below.

7. The question, which arises for consideration, is, whether the assessment of the market value of the land belonging to the applicants, which were acquired in the instant case, is just and proper, and whether the same has been made on proper consideration of the evidences on record.

8. The applicants/respondents have adduced oral and documentary evidence on their behalf, while on the part of the appellant, though no oral evidence was adduced, but certain documents which included the records of the Land Acquisition Cases initiated by the Land Acquisition Officer and the purported rate chart obtained from the Sub-Registrar''s Officer were adduced in evidence as (Exts. A and B).

9. Section 23 of the Land Acquisition Act provides matters to be considered in determining compensation to be awarded for the lands acquired under this Act and lays down that for the purpose of determining payable compensation, the Court shall take into consideration primarily the market value of the land at the

date of the publication of the notification u/s 4(1) of the Act and in addition to the market value of the land, the Court shall award in every case the amount calculated at rate of 12% per annum of such market value for the period commencing on and from the date of publication of notification u/s 4(1), till the date of the award of the Collector or the date of taking possession of the land whichever is earlier and further, the Court shall also award a sum of 30% of such market value in consideration of the compulsory nature of acquisition.

10. In the instant case, undisputedly, the lands belonging to the respondents were compulsorily acquired for the purposes of constructing National Highway. As regards the''nature of land acquired, it appears from the evidence adduced by the applicants/respondents, the lands are situated by the side of Patna-Ranchi Road within the heart of Jhumaritelaiya town and the lands are plain lands. In order dated 9.8.1984 of the Additional Collector, Land Acquisition, Hazaribagh recorded in the Land Acquisition Proceeding (Ext.-A), it has been acknowledged that the acquired lands are located within the heart of Jhumaritelaiya town and the lands have commercial value and also, that the lands were acquired are homestead lands and was fit for construction of the houses. It also appears from the same order of the Additional District Land Acquisition Officer that construction of pucca house is in progress by the side of the bye-pass road and considering the potential value of the lands acquired, the compensation amount of Rs. 2061.53 per decimal was the right rate as recommended for the compensation payable to the applicants. Yet, the Land Acquisition Officer has assessed the rate at Rs. 904.32 per decimal. The Land Acquisition Judge has observed that the Land Acquisition Officer has not assigned adequate reason as to why the rate has been assessed at Rs. 9045.32 per decimal, although it was recommended by the Additional Collector as per market value, the acquired lands could fetch at the rate of Rs. 2061.53 per decimal.

11. For the purpose of assessing the market value, the best evidence which could be relied upon are evidence which could suggest the price fetched for the lands situated adjacent to the acquired lands. The applicants had adduced two sale-deeds (Exts.-1 and 1/A) to demonstrate that, they could fetch price of much higher rate than what was assessed by the Land Acquisition Officer. Ext.-1/A is the sale-deed executed by one Jagdish Prasad Daruka in favour of Pradeep Kumar Chaudhary for 4 and 1/2 decimals of land situated within the village Belatand within Jhumartelaiya municipality. The sale-deed was executed and registered on 14.3.1981 and the consideration price as indicated in the sale-deed indicates that the rate of the land was Rs. 3,500/- per decimal and another sale-deed (Ext-1) executed by Jagdish Prasad Daruka in favour of Arjun Prasad Agarwala on 25.11.1980 shows the consideration amount of Rs. 15,000/- was paid for the sale of 5 and 1/4 decimals of land. Both the sale-deeds were apparently executed much prior to 1.4.1982, which was the date on which notification u/s 4(1) of the Act was published in respect of the lands acquired in this case. From the side of the appellant, no such document was adduced to indicate the price of the lands adjacent to and similar to the acquired lands on

the date of notification. The appellant have sought to rely upon the purported rate chart obtained from the Sub-Registrar''s Office, but the same could not be relied upon by the learned Court below on account of the fact that it was nor introduced in evidence, nor proved by the maker of the document. Thus, the documents which could be used as exemplar are the sale-deeds (Exts.-1 and 1/A). Learned Counsel for the appellant would argue that reliance on these sale-deeds should not be placed since the lands referred to are comparatively small pieces of land. This plea of the appellant could not be accepted firstly, because both the sale-deeds were executed more than one year prior to the date of the notification u/s 4(1) of the Act in respect of the lands acquired in this case and secondly, because the lands referred to in both the sale-deeds are identical and situated adjacent to the lands acquired in this case and are comparable with the acquired lands and these being the only documents produced in evidence, the same cannot be brushed aside as of no significance. It s significant to note that the rate as admitted by the District Land Acquisition Officer, Hazaribagh on inquiry in respect of the acquired land, in the Land Acquisition Proceeding, was at the rate of Rs. 2061.53 per decimal.

12. Learned Land Acquisition Judge has rightly assessed the market value of the land placing reliance upon the evidences including Ext.-A and Exts.-1 and 1/A. 1 find no illegality or infirmity in the findings recorded by the learned Court below in respect of the amount of compensation determined and awarded in favour of the applicants/respondents. For the reasons mentioned above, 1 do not find any merit in This appeal. Accordingly, both these appeals are dismissed.