

(2003) 09 JH CK 0028
In the Jharkhand High Court
Case No : A.F.O.D. No. 323 of 1991

State of Bihar (Now Jharkhand)

APPELLANT

Vs

Smt. Aruna Devi

RESPONDENT

Date of Decision : 19-09-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22
Land Acquisition Act, 1894 — Section 20, 23, 23(1A), 24, 25

Citation : (2004) 3 JCR 246

Hon'ble Judges : Vishnudeo Narayan, J

Bench : Single Bench

Advocate : Manjua Prasad, SC L and C, for the Appellant; Himanshu Kumar Mehta and Manjushri Patra, for the Respondent

Final Decision : Dismissed

Judgement

Vishnudeo Narayan, J.—These appeals at the instance of the appellant State of Bihar (Now Jharkhand) have been preferred against the impugned judgment dated 21.8.1990 and the award dated 2.11.1990 respectively passed in Land Acquisition Case Nos. 3 of 1983 and 4 of 1983 by Shri Vishwambhar Upadhyay, Sub-Judge I, Ranchi whereby and whereunder the references u/s 18 of the Land Acquisition Act made by the respondents for determining the quantum of compensation for the land, in acquisition were allowed and the compensation payable for the acquired land was determined @ 1,50,000/-per acre and besides that respondents were also allowed solatium and interest thereon under the provisions of the Land Acquisition (hereinafter referred to as the Act).

2. The respondents have also filed cross-objection in both the appeals for the enhancement of the compensation of the land under acquisition @ Rs. 8,40,000/- per acre.

3. The appellant State had acquired 31 decimals of land of plot No. 584/1 of Khata No. 134 of respondent Aruna Devi and 62 decimals of plot No. 594/2 of Khata No. 134 of respondents Krishna Kumar Sinha and Vijaya Devi situate in

village Katha Gonda @ Dar Gonda, P.S. and District Ranchi as per requisition of the Union of India, Ministry of Energy and Coal regarding extension of the Jawahar Nagar Colony of the CCL for construction of residential quarters of its officers and notification dated 8.5.1981 u/s 4(1) of the said Act was published in the District Gazette on 1.6.1981 and the same was locally published on 10.7.1981. The declaration dated 21.9.1981 u/s 6 of the said Act was also published in the District Gazette on 25.10.1981. The relevant notifications under Sections 7, 9 and 11 of the said Act were also published on 1.12.1981, 12.1.1982 and 20.1.1981 respectively. The land under acquisition is Tand I land. The appellant State after enquiry prepared the rate report for determining compensation of the acquired land and determined the compensation in respect thereof @ Rs. 70,350/- per acre payable to the respondents and award No. 1 and award No. 2 were, accordingly prepared in the name of respondent Aruna Devi as well as respondents Krishna Kumar Sinha and Vijaya Devi respectively. The respondents have received the amount of compensation so determined on 24.3.1982 under protest. The possession of the land under acquisition was taken by the appellant State and it was made over to the CCL on behalf of the Union of India on 19.2.1982.

4. The respondents filed their respective petitions u/s 18 of the said Act before the Collector Ranchi on 29.3.1982 in respect of award No. 1 and award No. 2 in Land Acquisition Case No. 55 of 1981-82 to make reference to the Land Acquisition Court for determining the proper quantum of compensation payable to them. The Collector referred the matter to the Land Acquisition Court, Ranchi u/s 19 of the said Act on 8.2.1983 vide its order dated 18.11.1982.

5. The case of the respondents, in brief, is that the compensation determined by the appellant State of the land under acquisition is grossly low and inadequate. It is alleged that the said land is located within the limits of Ranchi Municipal Corporation and it is well connected with road and hardly at a distance of less than 1-1/2 kilometers from the Court compound and the land is ideal for building and keeping in view the aforesaid facts the land has been acquired by the, appellant State for construction of the residential quarters of the officers of the CCL. It is also alleged that the land aforesaid, has vast potentialities having all the urban facilities and the area around it is fast developing as posh area where several respectable persons have built their residential houses and the prevailing rate of sale of the land is between Rs. 10,000/- to Rs. 15,000/- per katha and there are several prospective purchasers of the land @ 14,000/- per katha and compensation of the land under acquisition has to be determined @ Rs. 14,000/- per katha. Lastly it has been alleged that the sale transaction appearing in the sale report relied upon by the appellant State has no similarity or affinity to the land under acquisition and the said sale rate as relied upon by the appellant cannot form an appropriate basis for determining the compensation of the land in question.

6. The learned Court below framed an issue for determination in this case which

is as to whether the compensation paid to the respondents is according to the market rate prevalent at the relevant period and the same is adequate or not. "

7. In view of the oral and documentary evidence on the record the learned Court below came to the finding that the compensation determined by the Land Acquisition Authorities appears to be low and inadequate and on the basis of Exts. 1 and 2 and Ext. A, the compensation of the acquired land should be determined @ 1,50,000/- per acre and, accordingly, the compensation of the acquired land is determined @ Rs. 1,50,000/- per acre and besides that the claimants are entitled to get the compensation at the said rate and they are also entitled to get the necessary solatium at the new rate on the enhanced amount of compensation from the date of this order along with interest @ 6% per annum till realization.

8. Assailing the impugned judgment and award of the learned Court below it has been submitted by Mr. Manjul Prasad, learned counsel for the appellant that there is no rationale or reasonable ground for the learned Court below to determine the compensation of the acquired land @ Rs. 1,50,000/- per acre on the date of notification u/s 4(1) of the said Act. It has also been submitted that Exts. 1 and 2 cannot be a correct basis for determining the compensation of the acquired land in view of the fact that the lands covered under those sale deeds are adjacent the main road and they are chapparbandi land whereas the land acquired is a raiyati land of the respondents situated far away from the said land and these are agricultural land. It has also been submitted that Land Acquisition Authorities have rightly assessed the compensation of the acquired land as per the sale rate of item No. 10 in the sale report (Ext. A) and the said land is Tand II land situated hardly at a distance of five chains from the acquired land and three kathas of land therein was sold for Rs. 3500/- in the year of the acquisition and the rate of sale per acre comes to Rs. 70,350/- per acre. It has also been submitted that Exts. 1 and 2 have been taken into consideration in the sale report at item Nos. 19 and 20 which are situated at the distance of 24 chains from the acquired land and the sale rate mentioned in those sale deeds cannot form the proper rationale for determining the compensation of the land under acquisition and thus the learned Court has committed a manifest error in determining the compensation of the acquired land @ Rs. 1,50,000/- per acre and thus the impugned judgment is unsustainable. Lastly it has been contended that the cross-objection filed by the respondents in this case has no legal effect and it cannot be entertained in view of the fact that it has been brought on the record prior to the admission of this appeal for hearing which is against the mandate as contained under Order XLI, Rule 22 of the CPC which provides that cross-objection has to be filed within one month from the date of service on the respondents of notice of the day fixed for hearing the appeal.

9. Refuting the contention aforesaid it has been submitted by the learned counsel for the respondents that compensation of the acquired land ought to have been determined on the basis of the sale rate of Exts. 1 and 2 which shall in any case

be not less than the rate of Rs. 2,50,000/- per acre. It has also been submitted that the acquired land has great potentialities which is evident from the face of the record that the sale land has been acquired for building purpose being adjacent to the Jawahar Nagar Colony, CCL and there are also a large number of houses in the close vicinity of the said acquired land and the said land is located in the posh locality of the town and the acquired land is located within the limits of the Ranchi Municipal Corporation and is hardly at a distance of 1-1/2 kilometers from the Civil Court and the acquired land has vast potentialities having all the urban facilities. It has also been submitted that in the sale deeds (Exts. 1 and 2) lower rate of sale has been mentioned therein for obvious reasons whereas the prevailing rate of sale of the land in the locality where the acquired land is situate is between Rs. 10,000/- to Rs. 15,000/- per katha and there are also several prospective purchasers of the land @ Rs. 14,000/- per katha and the learned Court below has wrongly discarded the evidence in respect thereof of the respondents and their witnesses. It has also been submitted that there is no rationale for the learned Court below to determine the compensation of the acquired land @ Rs. 1,50,000/- per acre which is grossly low and inadequate. Lastly it has been contended that the cross-objection filed by these respondents is maintainable and there is no infirmity in respect thereof in spite of the fact that these cross-objections have been filed by them prior to the admission of the, appeal for hearing and its notice being served on them. In support of their contention reliance has been placed upon the ratio of the cases of Dasural Bhagchand Lal v. Narayan Mahadeo and Ors. AIR 1937 Nag 105 and Labhu Ram and Ors. v. Ram Pratap and Ors. AIR 1944 Lah 76.

10. Let us now first take up the question of maintainability of the cross-objection filed by the respondents in this appeal. Both the appeals were filed by the appellant on 8.4.1991 against the impugned judgment and award after the expiry of the period of limitation prescribed for filing of the appeal. An application u/s 5 of the Limitation Act for condoning the delay in filing the appeals was filed by the appellant in both the appeals on 16.4.1991 and notice was ordered to be issued on the respondents vide order dated 1.4.1992. The notices on the limitation matter were not served upon the respondents but they appeared in these appeals which was fixed for hearing on the limitation matter. It appears that the application u/s 5 of the Limitation Act was allowed by this Court vide order dated 18.2.1993 and the delay in filing the appeal as condoned. Both the appeals were admitted for hearing vide order dated 9.7.1993. The cross-objection were filed on 16.3.1992 prior to the order of admission of these appeals Order XLI, Rule 22 is relevant in this connection which runs thus :--

"22. Upon hearing, respondent may object to decree as if he had preferred separate appeal.--(1) Any respondent, though he may not have appealed from any part of the decree may not only support the decree but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour, and may also take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the

appellate Court within one month from the date of service on his or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the appellate Court may see fit to allow.

Explanation.--A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent."

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It, therefore, appears that cross-objection has to be filed within one month from the date of the service on the respondent or his pleader of the notice of the day fixed for hearing the appeal. Here in this case the respondents had filed their cross-objections much prior to the admission of the appeal for hearing and there was also no need of service of notice on them for the hearing of the appeal in view of the fact that respondents had appeared in these appeals in the limitation matter itself. Now a pertinent question arises regarding the maintainability of the cross objection filed by the respondents in these appeals prior to their admission for hearing. In the case of Dasural Bhagchand Lal (supra) it has been observed that the words "within one month" in Order XLI, Rule 22 of the Code mean not beyond one month and respondent has a right to file cross-objections at any time up to one month after the date of the service of notice of the appeal. The earlier filing of cross-objection is not prohibited by the CPC and the respondent right to file cross-objection is in no way dependant on the service of notice on him of the appeal. It has been observed in the case of Labhu Ram and others, (supra) that cross-objection cannot be presented after the expiry of one month from the date of the service of the notice on the respondent or his pleader but the right to submit their cross-objection accrues to the respondent as soon as an order is made issuing notice of the date of hearing of the appeal to him and it is not necessary for them to wait until the service is actually affected on them. It has further been observed that it is open to the respondent to appear in Court of appeal on the date of hearing and present his objection there and then though not served at all and to put the restricted interpretation upon this provision of law would create situations which may look anomalous. In view of the ratio of ease laws referred to above read with the mandate as contained in Order XLI, Rule 22 it appears that cross-objection filed prior to the service of notice of hearing the appeal does not suffer with any legal infirmity and it does not put a bar on the right of the respondent of filing cross-objection earlier to the service of notice of the hearing of the appeal. Therefore, the cross-objections filed by the respondent in this case is maintainable.

11. There is no denying the fact that the appellant State had acquired in all 93 decimals of land of plot No. 584/1 and 594/2 of Khata No. 134 of the respondents situate in village Katha Gonda @ Dar Gonda for construction of the

residential quarters of the officers of CCL extending its Jawahar Nagar Colony and a notification to that effect was made u/s 4(1) of the said Act on 8.5.1981. The appellant State had determined the compensation of the acquired land @ Rs. 70,350/- per acre and has, accordingly, prepared the award on 20.1.1982 and compensation amount has been received by the respondents under protest. The respondents claimed the compensation of the acquired land @ Rs. 14,000/- per katha. The learned Court below on the basis of the evidence oral and documentary on the record has determined the compensation of the acquired land @ Rs. 1,50,000/- per acre. Both the parties have disputed the quantum of compensation determined by the learned Court below, the reason being that there is no rationale for the learned Court below to determine the compensation @ Rs. 1,50,000/- per acre. The appellant contends that it is on the higher side whereas according to the respondents it is grossly low and inadequate. Before advertng to the evidence on the record it is relevant to mention at the very outset that it has been settled by plethora of judicial pronouncements of this Court as well as of the Apex Court that the compensation should be paid to the claimant of the land under acquisition taking into consideration the market value of the land on the date of publication of the notification u/s 4(1) of the said Act. In the case of Suresh Kumar v. Town Improvement Trust Bhopal 1989 BLJR 21, it has been observed by the Apex Court that "it is true that the market value of the land acquired has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquires nor undue deprivation on the part of the owner Section 23 of the Act enumerates the matters to be considered in determining compensation. The first to be taken into consideration is the market value of the land on the date of publication of the notification u/s 4(1). The market value is that of a willing vendor and a willing purchaser. A willing vendor would naturally take into consideration such facts as would contribute to the value of his land including its unearned increment. A willing purchaser would also consider more or less the same factors. There may be many ponderable and imponderable factors in such estimation or guess work Section 24 of the said Act enumerates the matters which the Court shall not take into consideration in determining compensation Section 25 provides that the amount of compensation award by the Court shall not be less than the amount awarded by the Collector u/s 11. It is an accepted principle that the land is not to be valued, merely by reference to the use not which it has been put at the time at which its value has to be determined i.e., on the date of the notification u/s 4, but also by reference to the use to which it is reasonably capable of being put in the future. A land which is certainly or likely to be used in the immediate or reasonably near future for building purposes but which at the valuation is waste land or has been used for agricultural purposes, the owner, however willing a vendor he is, is not likely to be content to sell the land for its value as waste or agricultural land, as the case may be. The possibility of its being used for building purposes would have to be taken into account. It is well established that the special, though natural, adaptability of the land for the purpose for which it is taken is an important element to be taken into consideration in determining the market value of the

land. In such a situation, the land might have already been valued as more than its value as agricultural land if it had any other capabilities. In sum, in estimating the market value of the land or all of the capabilities of the land and or all its legitimate purposes to which it may be applied or for which it may be adapted are to be considered and not merely the condition it is in and the use to which it is at the time applied by the owner. The proper principle is to ascertain the market value of the land taken into consideration the special value which ought to be attached to the special advantage possessed by the land namely its proximity to develop urbanized areas". In the case of Shambhu Nath and Ors. v. State of Bihar 1989 PLJR 676 , it has been observed that the compensation should be paid taking into consideration various factors including the location, importance, prospect and purpose of the land sought to be acquired and the location of the land takes it out from the purview of agricultural land. In the case of Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, , the Apex Court has observed that the market value of land must be determined as on crucial date of publication of notification u/s 4 and has also prescribed general guidelines therein to be applied with understanding informed with common sense.

12. The market value of the land in question prevailing on 8.5.1981/1.6.1981 has to be ascertained for payment of just and adequate compensation to the respondent on the basis of the oral and documentary evidence on the record coupled with the guidelines referred to above. It is pertinent to mention here at the very outset that the land under acquisition is raiyati Tand I land situate in a village adjacent north west of the town of Ranchi. The land has been acquired for the extension of Jawahar Nagar Colony of the CCL and the buildings are to be constructed on the said acquired land for the residence of its officers. There is evidence brought on the record by the respondents to show and establish the fact that there is a posh colony emerging at the vicinity of the land under acquisition and it is situated from the Court and the Collectorate at the distance of one and half or two miles only. The purpose for which the land has been acquired also adds to its potentiality. Respondent Vijaya Devi who figures as AW 2 has deposed that in the year 1980-81 she was negotiating for the sale of the acquire kind and she has been offered Rs. 13,000/-per katha for the said land. However, in para 6 of her evidence she has deposed that she has neither acquired nor sold any land in the year 1980-81 at the said rate. She has also deposed that no land in the vicinity of the acquired land was sold in her presence at the said rate. She has further deposed that she has no document to evidence the fact that the rate of sale in the vicinity of the acquired land at the relevant time was between Rs. 15,000/- to Rs. 20,000/- per katha AW 1 has deposed that in the year 1980-81 the prevalent rate of stile of the land in the vicinity of the acquired land was between Rs. 15,000/- to Rs. 16,000/- per katha. In para 2 of his cross-examination he has deposed that he is not a resident of the village in which the land under acquisition is situated. He has also deposed that he has also not sold or acquired any land in the said village at the said rate. He has also

deposed that one Maharaj Kumar has sold the land in his presence. No sale deed executed by Maharaj Kumar aforesaid has been brought on the record to evidence the fact that the prevailing rate of sale of the land in the vicinity of the acquired land was between Rs. 15,000/- to Rs. 16,000/- per katha. He has also deposed that a person acquainted with him has negotiated for the purchase of a piece of land near the land under acquisition in the year 1980-81 and he was offering Rs. 12,000/- per katha but the vendor was insisting for Rs. 15,000/- per katha. The said person has not come to depose in this case to support the evidence of AW 1. AW 3, a resident of Sheopur in Sukhdeonagar P.S. has deposed that his relative had negotiated for the purchase of the land near the land under requisition at the relevant time @ Rs. 13,000/- per katha but the owner thereof was insisting for Rs. 15,000/- per katha but he could not purchase the land as he was not willing to pay Rs. 15,000/- per katha. In para 5 of his cross-examination he has deposed that he has also not acquired or sold any land during the relevant period at the said rate. His evidence is further to the effect that he has no document to evidence the fact that any land in the vicinity of the acquired land has been sold @ Rs. 15,000/- per katha in the year 1980-81. Therefore, the oral evidence on the record brought by the respondents is of no help to the respondents to establish the fact that the prevailing rate of sale of the land in the vicinity of the land under acquisition was Rs. 15,000/- per katha. Ext. 3 is a sale deed dated 23.11.1974 executed by Sheikh Anwar Ali in favour of Smt. Maina Devi for Rs. 25,000/-. This sale deed is in respect of 5 katha of land along with a house standing thereon and it is situated adjacent Pilhoria-Kanke road though it is within Katha Gonda village. Therefore, Ext. 3 cannot be a proper basis for determining the prevailing market price of the land under acquisition and the learned Court below has rightly did not consider it as a basis for determining the adequacy of the compensation of the acquired land. Ext. 1 is a sale deed dated 21.2.1981 for Rs. 27,000/- in respect of 6 katha 11 dhoors, and 30 square feet of chapparbandi land in plot No. 667 situate in village Kathar Gonda. The plot sold by the sale deed has been described as 661/B/1. The plot covered under the said sale deed is adjacent the main road and there are houses adjacent the said plot. As per Ext. A the land under acquisition is 24 chains away from it. Ext. 2 is the sale deed dated 30.12.1980 for Rs. 24,900/- in respect of 6 kathas 11 dhoors and 39 square feet of chapparbandi land of plot No. 667 marked in the sale deed as 667/A/2 and it is also in the close proximity of the said road having houses adjacent to the said land. The distance of the acquired land from this plot is also 24 chains.

Therefore, Exts. 1 and 2 can also not be a proper basis for determining the compensation of the land under acquisition. As such there is no evidence on the record to establish the case of the respondents for claiming compensation of the land under acquisition @ Rs. 14,000/- or Rs. 15,000/- per katha. The learned Court below has rightly did not act upon Ext. 1 and Ext. 2 for determining the adequacy of the compensation to be awarded to the respondents for the land under acquisition. Both these sale deed figure in the sale report Ext. A prepared

by the appellant. The appellant State has assessed the compensation @ Rs. 70,350/- per acre on the basis of Item No. 10 which is a sale deed dated 30.3.1981 in respect of 3 kathas Tand II Parti Kadim land sold for Rs. 3500/-. This land is situated at a distance of only five chains from the land under acquisition Item No. 10 appearing in the sale report (Ext. A) in view of the nature of the land cannot be a proper basis for determining the prevalent market price of the land under acquisition on the relevant date. The learned Court below considering the potentiality of the land under acquisition had determined the compensation of the land under acquisition @ Rs. 1,50,000/- per acre and for this he has given cogent reasons in the impugned judgment I see no reason to disagree with the finding of the learned Court below in determining fair and adequate compensation of the land under acquisition considering the vast potentialities surrounding the said land which is Tand I land adjacent Jawahar Nagar Colony fit for its extension and for the purposes of constructing residential quarters thereon and in this view of the matter the learned Court below has rightly determined the compensation of the acquired land @ Rs. 1,50,000/- per acre. However, the learned Court below in the impugned judgment did not award additional compensation u/s 23(1-A) of the said Act and the learned Court below has erred in respect thereof. Here in this case award of the Collector u/s 11 of the said Act was made on 20.1.1982 and the award of the Court as made on 2.11.1990 i.e., after the commencement of the Amending Act, 1984 w.e.f. 24.9.1984. Therefore, the respondents is entitled for additional compensation u/s 23(1-A) and solatium @ 30% on the market value of the land under acquisition as determined by the learned Court below along with Interest at the enhanced date as per amended Section 23(2) and Section 28 respectively of the said Act with effect from the date of notification u/s 4(1) of the said Act. Therefore, the award made by the learned Court below in this case is hereby modified to that extent.

13. There is no merit in the appeal as well as in the cross-objection and they fail. The appeal as well as the cross-objections are hereby dismissed with the modification of the award as indicated above. However, there shall be no order as to costs in the facts and circumstances of this case.