
(1970) 05 OHC CK 0001

In the Orissa High Court

Case No : Miscellaneous First Appeal No. 94 of 1965

State of Orissa

APPELLANT

Vs

Baji Behari Guru

RESPONDENT

Date of Decision : 15-05-1970

Acts Referred:

Central Provinces Tenancy Act, 1898 — Section 45, 46, 46(2), 46(3), 47

Land Acquisition Act, 1894 — Section 23, 23(1), 3, 3(2), 4

Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisitions) Act, 1948 — Section 7(1), 7(3)

Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisitions) Rules, 1950 — Rule 23

Citation : (1970) 36 CLT 1235

Hon'ble Judges : B.K. Patra, J

Bench : Single Bench

Advocate : Advocate General and K.C.J. Ray, for the Appellant; R.C. Patnaik, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Patra, J.—This is an appeal u/s 7(3) of the Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (Act 18 of 1948)(hereinafter referred to as the Act) against an award dated 8-9-1964 of the Arbitrator, Hirakud Land Organisation, Sambalpur. 7.06 aores of Sir lands of mouza. Gurupali were acquired by the State in 1955. The competent authority had offered Rs. 3906.19 p. as compensation for the lands and Rs. 49.25 p. for the trees standing thereon including 15% additional compensation in respect of the trees. The Respondent did not accept the compensation and on objections raised by him, the matter was referred to the Arbitrator. The objection relating to the valuation fixed for the trees was not passed before the Arbitrator and the dispute before him was confined to the sole question regarding proper compensation payable for the Sir lands acquired. The Respondent contended that in the District

of Sambalpur, there was no difference between Sir lands and Bhogra lands and that accordingly the compensation should be calculated by capitalising twenty year's net profits of the disputed lands as is done in the case of Bhogra lands on the basis that Sir lands are freely transferable. The learned Arbitrator did not accept this contention. It was next contended on behalf of the Respondent that even assuming that this case falls under the second proviso to Section 7(1)(e) of Act 18 of 1948 still in view of the fact that the State Legislature had not made any rules regarding the mode of calculation of the reduced rental value of such land, the second proviso would, not be applicable with the result that Respondent should be entitled to the market value of the acquired lands. This contention found favour with the learned Arbitrator who fixed the compensation for the acquired lands at 16 times its annual yield, leaving the work of calculation of the net yield to be done by the Land Acquisition Officer on the basis of crop cutting experiments recorded in the Hamid Settlement Report. He also allowed 15% additional compensation and 6% interest on the total compensation amount from the date of dispossession till the date of actual payment, with a further direction that the advance compensation, if any, already paid to the objector, and composition amount, if any, already deposited as revenue deposit in favour of the objector, should be excluded while calculating the interest as allowed above. Being aggrieved by this decision, the State of Orissa has referred this appeal.

2. To appreciate the contentions raised in this case, it is necessary to refer to Section 7(1) of the Act which prescribes the method of determining compensation. Section 7(1) so far as is material runs thus:

7(1) Where any land has been acquired under this Act" there shall be paid compensation, the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say

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(e) The Arbitrator in making his award, shall have due regard to the provisions of Sub-section (1) of Section 23 of the Land Acquisition Act, 1894.

Provided that the market value referred to in the first clause of Sub-section (1) of Section 23 of the said Act shall be deemed to be the market value of such land on the date of publication of the notice u/s 3, or as the case may be, the preliminary notification under Sub-section (1) of Section 4 of the Land Acquisition Act, 1894, referred to under Sub-section (2) of Section 3 or on the first day of September, 1939, with an addition of fifty per cent; whichever is less:

Provided further that where under any law or custom having the force of law, the lands are not saleable, the market value of such lands shall be such multiple as may be prescribed of the deduced rent to be calculated in the prescribed manner, with addition of fifty per cent:

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In State of Orissa Vs. Bharat Chandra Nayak, , a Division Bench of this Court

struck down the following portion of the first proviso to Section 7(1)(e):

or on first day of September, 1939, with an addition of fifty percent whichever is less.

3. It is not disputed that if the land under acquisition is not saleable, compensation has to be calculated in the manner laid down by the second proviso and in other cases it has to be calculated in the manner laid down by the first proviso. The question therefore for consideration is whether Sir lands are nonsaleable. This question was comprehensively dealt with in a recent Full Bench decision of our High Court in *Gajraj Sahu v. The State of Orissa* and Anr. 36 (1970) C.L.T. 782 (F.B.). Their Lordships in that case were concerned with the lands acquired on 15.11.1951, that is, before Orissa Act 13 of 1953 came into force. Under this Amendment Act, Sub-sections (2) & (3) of Section 46 of the Central Provinces Tenancy Act, 1898 were substituted by new provisions and a new Sub-section (4) is added to the section. Section 47 and 48 of the Central Provisions Tenancy Act were omitted. A reference to Section 45 of this Act would show that a tenant has got rights of occupancy in Sir lands. Section 46 as it stands after the amendment does not make the transfer of holding by an occupancy tenant wholly void, but makes it only voidable in the manner laid down in the Act. That being the position, it cannot be said that these lands are wholly unsaleable within the meaning of the second proviso to Section 7(1)(e) of the Act and if such lands are acquired, compensation has to be paid as provided in the first proviso to Section 7(1)(e). This is exactly what the learned Arbitrator had done, although his grounds for calculating compensation under the first proviso are different.

4. As this is a case of compulsory acquisition, the Arbitrator is also justified in awarding 15% extra compensation as is done in cases of land acquired under the Land Acquisition Act, 1894. So far as interest is concerned, Rule 23 of the Rules framed under the Act authorizes the competent authority at the time of payment of compensation to the person or persons entitled thereto to pay to them six per centum per annum on the said amount for the entire period between the date of taking possession of the land and the date notified for making payment. Hence no exception can be taken to this part of direction made by the learned Arbitrator.

5. In the result, the appeal fails and is dismissed with costs.