

(1965) 04 OHC CK 0014

In the Orissa High Court

Case No : Miscellaneous Appeal No. 46 of 1963

State of Orissa

APPELLANT

Vs

Banamali Babu

RESPONDENT

Date of Decision : 01-04-1965

Acts Referred:

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

Land Acquisition Act, 1895 — Section 55

Land Acquisition Rules — Rule 8

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

Citation : (1965) 31 CLT 683

Hon'ble Judges : Ahmad, C.J;Barman, J

Bench : Division Bench

Advocate : Advocate General and R. Das, for the Appellant; R.N. Sinha and S.C. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

Barman, J.—The question in this appeal is regarding Land Organisation, Sambalpur. The Arbitrator was appointed by the Government of Orissa in exercise of the powers conferred by Section 7(1)(b) of the Orissa Development of Industries, Irrigation, Agricultural, Capital Construction and Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (hereinafter referred to as Orissa Act 18 of 1948) to determine the compensation of the lands acquired under the said Act in land acquisition proceedings in connection with the Hirakud Dam Project.

2. The lands in question 55.49 acres are ryoti lands of the objector-Respondent in village Talpadar in the district of Sambalpur. They were acquired by the Government under the Land Acquisition Act (Act I of 1894) by two notifications, namely Notification No. 11500-L.A./130-R dated October 26, 1948 and Notification No. 979 dated April 9, 1949. Actual possession was however taken by Government only on March 25, 1949 and June 8, 1949 respectively.

3. The quantum of compensation for acquisition of these ryoti lands of the objector was once previously fixed by an award by the predecessor-in-office of the Arbitrator. The said previous award was challenged by the objector before a Division Bench of this Court in Miscellaneous Appeal No. 165 of 1957. The decision of this Court was in *Banamali Babu v. State of Orissa* 27 C.L.T 126 : ILR 1961 Cutt. 442. Disagreeing with the previous Arbitrator this Court held that in respect of ryoti lands he ought to have awarded compensation having due regard to the provisions of Sub-section (1) of Section 23 of the Land Acquisition Act and he should not have applied the second proviso to Clause (e) of Sub-section (1) of Section 7 of Orissa Act 18 of 1948 for the reasons fully discussed in the said judgment which we need not repeat herein and set aside the award of the previous Arbitrator the case was accordingly remitted to him (or to his successor in office) for estimating the market-value of the said ryoti lands and disposal of the case according to law in respect of those lands.

4. While remanding the case to the successor Arbitrator this Court had indicated that the character of these ryoti lands in Sambalpur district governed by the Central Provinces Tenancy Act, 1898 is somewhat peculiar they being neither wholly non-saleable nor freely saleable.

5. Relying on a decision of the Nagpur High Court in *Shafkat Hussain v. Collector of Amraoti* AIR 1938 Nag 208 it was urged on behalf of the objector that in estimating the market-value of the land the element of non-transferability should not be considered, and that for these ryoti lands also the capitalised value of the net income should be taken as the market-value and the restriction on the right of transfer of these ryoti lands was not at all material. This aspect of the matter was however left to the successor Arbitrator to consider. The Arbitrator was left free to follow the principles laid down in Section 23(1) of the Land Acquisition Act bearing in mind the aforesaid Nagpur decision under that section.

6. After remand the objector had re-examined himself but had not adduced any further documentary evidence. On behalf of the State Government, 5 more witnesses were examined and certain documents being Exts. D to K had been marked. After hearing both the parties at length on the question what would be just and proper market-value of the ryoti lands the Arbitrator fixed 16 years net yield as the basis for payment of the compensation amount to the objector. In so doing the Arbitrator followed the same principle as laid down by this Court in *State of Orissa Vs. Bharat Chandra Nayak*, . The material portion of the directions given by the Arbitrator to the Land Acquisition Officer for working out the actual figures for payment of the compensation amount to the objector is this-

The sixteen net yield of the different arears of Royati lands of different classifications acquired in this case, should be worked out by the Land Acquisition Officer according to the specimens contained in the Hamid Settlement Report for assessing the actual figure of compensation payable to the objector. The straw yield was fixed in the above *State of Orissa Vs. Bharat Chandra Nayak*,

at 1/1/2 times of the paddy yield. The same principle may be adopted in this case as well, and the total maundage of paddy yield arrived at by the L.A.O. I after proper calculation, may be taken as the standard and 1/1/2 times of the total calculation, may be taken as the standard and 1/1/2 times of the above paddy should be deemed as the total moundage of straw yield of the lands per year, The value of such paddy and straw should be assessed at the prescribed Government rates prevailing by the date 9th April, 1949 (date of notification). Then the 16 years net yield are to be calculated, After such calculation would be made, 16 years rental must be deducted from the total amount and the remainder would be deemed as the market value of the Royati land.

7. It is against this award by the Arbitrator that this appeal has been filed by the State of Orissa. The case of State of Orissa is that the amount awarded by the Arbitrator is Rs. 33,053/- in excess of the amount agreed to be paid by the Competent Authority in that according to the basis of the calculation under the Award, the amount payable to the objector is Rs. 49,112/- whereas the amount agreed to be paid by the Competent Authority is Rs. 16,059/-.

8. The question is Was the basis of calculation for determining the quantum of compensation payable to the objector as fixed by the Arbitrator correct? The learned Advocate General appearing for state of Orissa strongly urged that the Arbitrator should have taken into consideration Rule 8(a) in Chapter XX under caption Instructions under the Land Acquisition Act I of 1894 of the Sambalpur Manual, 1928, Volume II, containing the executive rules framed under the Revenue Acts and Orders in force in the Sambalpur District (page 243-244) Rule 8(a) on which State of Orissa relies is this:

For acquisition of raiyati land compensation should be paid at 192 times of the deducted rent, the result representing complete compensation to be awarded including additional compensation of 15 percent payable u/s 23(2) of the Act for compulsory acquisition.

In this context State of Orissa also relied on a Government notification dated October 18, 1951. It says that in pursuance of Rule 1 of the Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and Re-settlement of Displaced Persons (Land Acquisition) Rules, 1950, the Government of Orissa is pleased to notify that in the district of Sambalpur the market value of lands which are not saleable and are required under the said Orissa Act 18 of 1948 shall be 192 multiple of the deduced rems. In our Opinion contentions of State of Orissa are not tenable for reasons hereinafter discussed.

9. Rule 8(a) is only an executive instruction not having the force in law. It is not a rule under the rule-making power of the Appropriate Government u/s 55 of the Land Acquisition Act, 1895 under which the Appropriate Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement. Section 55 enjoins that such rules must be consistent with the Act. Rule 8(a) is clearly inconsistent with Section 23(1) of

the Land Acquisition Act.

10. The absurdity of the application of Rule 8(a) is made clear by the Arbitrator in his award in that the calculation on the basis of 192 times of the deduced rent under the said Rule will be worse than that by even applying the method of assessment provisionally decided by the Government in their letter dated July 29, 1948 Ext. 16 which says that compensation for acquiring Bhal, Berna and Mal classes of land as a special case be assessed at 500 times the deduced rent.

11. The Orissa Act 18 of 1948 which came into force on January 25, 1949 contemplated framing of new rules under the Act. All existing rules relied on, on behalf of State of Orissa, had no application to this case. The present acquisition was made in April 1949 while the new rules under the Act had not yet been framed, and the old rules by implication had been abrogated by virtue of the provisions of Section 7 of the Act. Indeed it was not until June 19, 1950 that the new rules came into force. It would thus be futile to seek to fall back on the old rules including Rule 8(a) or the method of assessment in Government letter dated, July 20, 1948 Ext. 16 which could not be applied by virtue of the provisions of Section 7 of Orissa Act 18 of 1948.

12. The learned Advocate General also relied on Rule 21 which says-

The market value of lands which are Dot saleable shall be such multiple of the deduced rent as may be notified by the State Government from time to time. His contention relying on, Rule 21 and the Government notification dated October 18, 1951 has also no force because on the date of the acquisition of the lands on April 9, 1949, Rule 21 had not yet come into force. The Rules came into force on January, 19, 1950. The position in April 1949 was this the new rules under the Act had not yet come into force, and the old rules also, by implication, had been abrogated by virtue of Section 7 of the Orissa Act 18 of 1948.

13. It was in this view that this Court in their judgment in the earlier Miscellaneous Appeal No. 165 of 1957 had made it clear that the latter date of notification of acquisition by Government, namely April 9, 1949 must be considered to be the relevant date for the purpose of ascertaining the law relating the payment of compensation to the deprived owner (objector), and further that the objector was entitled to compensation in accordance with the market-value of the ryoti lands bearing in mind the principles laid down in Sub-section (1) of Section 23 of the Land Acquisition Act-all as fully discussed in the said judgment.

14. In the ultimate analysis, therefore, we are left with Section 23 of the Land Acquisition Act which lays down the matters to be considered in determining compensation. Section 23(1) provides-

23. M alters to be considered in determining compensation (1) In determining the amount of compensation to be awarded for Land acquired under this Act, the Court shall take into consideration-

First, the market value of the land at the date of the publication of the notification u/s 4, Sub-section (1) Secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession there of Thirdly, the damage (if any) sustained by the person interested, at the time of the collector's taking possession of the land, by reason of severing such land from his other land Fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property movable or immovable, in any other manner, or his earnings.

Fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change and Sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration u/s G and the time of the Collector's taking possession of the land.

15. The point now is that was the market value of these ryoti lands at the date of publication of the notification, that is April 9, 1919 Both sides adduced evidence in support of their respective contentions. State of Orissa relied on certain sale deeds purporting to show there from the rate per acreage at which ryoti lands in the vicinity of the acquired lands in question were sold on different dates as will appear from the chart of analysis supplied by the learned Advocate General described as, Table A set out below:

Ext. Date Village. Extent of land. Amount. Rate per acre

No.

1 2 3 4 5

"D" 10-6-1955 A.2.22 (All Rayati) Rs. 550 - Rs. 250 approx

"E" 28-1-1955 A.4.28 () Rs. 1000 - Rs. 235 -do-

"E.I" 28-1-1953 A.4.16 () Rs. 1000 - Rs. 40 -do-

" F" 6-11-1949 A.2.51 (probably) Rs. 200 - Rs. 80. -do-rayati)

"A" 31-3-1945 A.8.24 (Bhogra) Rs. 2000 - Rs. 240 -do-

"A/1" 6-4-1948 A.1.21 () Rs. 460 - Rs. 400 -do-

16. The objector also relied on certain sale deeds in import of his contention showing the price at which different lands were sold as will appear from the chart supplied by him described as Table B set out below.

Date Mouza Area Consideration

1. 29-7-43 Gobindapal 0-06 (Rayati) Rs. 23/8/- Ex. 3

2. 8-7-48 Katapali 0-36 (Rayati) Rs. 160/- Ex. 3(a)
3. 29-12-50 Amsara Katapali 0-12 (Rayati) Rs. 600/- Ex.3(b)
4. 5-1-48 Different villages 4-62 (Bhogra)2-83 Rs. 21,500/- Ex.
5. 11-4-56 Sargapali 0-35 (Rayati)4(Rayati) Homestead 50 cubits x 17 cubits Rs. 330 Ext.4(a)
6. 27-3-48 Khasarabira 0-10 (Bhogra) Rs. 400/-Ex.4(b)

17. The analysis of the documents in the charts relied on by the parties in support of their rival contention clearly reveal this position According to State of Orissa the maximum rate per acre for ryoti lands is Rs. 250/- approximately as appears from its Table A. On the other hand, the objector relying on his chart in his Table B submits that items Nos. 1, 2, 3 and 5 thereof measure 0.89 acres which were sold for Rs. 1112-8-0, that is to say, the average rate for ryoti lands is nearly Rs. 1225 per acre. The objector further submits that by comparison of item Nos. 3 and 6 of his Table B, it appears that in certain instances ryoti lands were sold at a higher price than Bhogra lands. The objector's point is that on the basis of the calculation awarded by the Arbitrator, the average rate per acre for ryoti land would be round about Rs. 890/- which, according to the objector, is reasonable compensation in accordance with Section 23(1) of the Land Acquisition Act.

8. The oral evidence as unsatisfactory does not also support the case of State of Orissa. The evidence of the witnesses caned by State of Orissa shows that the lands covered by Ext. D, E, E/1 were all fallow lands. The evidence of O.P.W. 1 (after remand) is that the land under Ext. D was lying waste and there is a hillock on the land. So also O.P.W. 2 (after remain) said that the lands under Ext. E and E/1 were for a long time lying fallow. As regards Ext. F the evidence of O.P.W. 3 (after remand) is that the for purchase of 2.51 cents paid Rs. 700/- as purchase money though the stamp was executed for Rs. 200/-. This witness was declared hostile by the learned advocate appearing for the State. One cross-examination by the A objector the witness said that he took the sale for Rs. 700/- factually though it was recited as Rs. 200/-. The Arbitrator found it difficult to fix the actual consideration under the sale deed Ext. F.

19. It is true that prices of lands vary from village to village according to the qualities of the lands and the interests of either the vendor or the vendee and depend to other factors. It is primarily this aspect which weighed with the Arbitrator in not relying on the sale deeds produced by both sides as of very little value for arriving at any definite standard as to the market value of any of the classes of land acquired. But what the Arbitrator does not appear to have taken into consideration is the oral evidence of the objector himself after remand. The material portion of the evidence of the objector is this:

Out of 55.49 acres of Rayati lands, about 19 acres are Bahel (Class I), 20 acres are Berna (Class II), 15 acres are Mal (Class III) and the rest are At and Bari and

Borchas. Bari and Borchas are also Class I lands. Most of the paddy that I used to get from the Rayati lands are superfine and fine qualities I have filed the sale deeds in respect of sale of lands in the neighboring villages or near about villages. They were already exhibited as Exhibits 3, 3(a), 3(b) and 4, 4(a) and 4(b) before Remand. Those are indicative of the prevailing market rates. Each class of lands bears separate soil factor-whether Bhogra or Raiyati. Rent is assessed on the basis of the Roil Factor. A piece of Raiyati land is assessed to the same rate of rent as is fixed for a piece of Bhogra land of the same class. The records I consulted were the Hamid Settlement Report and the Khatians...Rayati lands were saleable. It is not a fact that Rayati lands were not saleable except under some restrictions. It is-not a fact that Rayiti lands are usually less fertile than the Bhogra lands (adds). The fertility of a piece of a land depends on the situation, attention and access to village drainage and irrigation facilities whether it is Bhogra or Rayati. As these documents Exhibits 3 series and 4 series were marked on admission, I have not brought any witnesses for them. It is significant that there was no cross-examination on behalf of State of Orissa of the objector who himself deposed as a witness after remand. His evidence therefore stands uncontradicted. The evidentiary value of the documents which objector relied on, namely Ext. 3 series and Ext. 4 series cannot therefore be rejected. The analysis of these documents in Table B quoted above show that the average rate per acre at which the ryoti lands were sold was nearly Rs. 1225/- per acre.

20. Having regard the evidence and facts in this case, which we have ourselves examined as discussed above, the conclusion of the Arbitrator in fixing 16 years net yield as the basis for calculation the manner as directed by him is in our opinion correct.

21. On the question of sale ability of the acquired lands in question the admitted position is that prior to the date of publication of the rules on June 19, 1950, there were no rules made under Act 18 of 1948 providing for method of calculating the deducted rent of lands which were not saleable or the multiple of such deduced rent of such lands which could be taken into consideration in fixing compensation. In fact in estimating the market value of the land the element of non-transferability should not be considered. In the case of Riyati lands also the capitalised value of the net income should be taken as the market value and the restriction on the right of transfer of the ryoti lands is not at all material. We have already pointed out the somewhat peculiar character of the lands in question governed by the provisions of the Central Provinces Tenancy Act as then in force.

22. While, therefore, agreeing with the ultimate conclusion of the Arbitrator about the basis of calculation of the compensation payable to the objector, we do not fully in all respects agree with all his line of reasoning in the award. We have, however, independently come to the same conclusion on examination of the evidence and the facts of this case as discussed above.

23. There is a cross appeal by the objector claiming interest on the ground that

the Arbitrator should be directed the Land Acquisition Officer calculating the interest on the compensation of the principle decided in State of Orissa v. Banamali Babu 27 C.L.T. 164 : ILR 1961 Cutt 451 where it was held that the Arbitrator is entitled to award interest to the deprived owner from the date of his dispossession, till the date on which final payment would be made. In fact in the present case the award under appeal is silent regarding interest. The learned Advocate General does not oppose the cross-appeal of the objector claiming such interest.

24. In the result, therefore, the appeal stands dismissed, and the cross-appeal is allowed. The objector Respondent herein is entitled to costs.

Ahmad, C.J.

25. I agree.