
(2002) 12 OHC CK 0022
In the Orissa High Court
Case No : First Appeal No. 54 of 1996

State of Orissa

APPELLANT

Vs

Dwarikanath Garnaik and Others

RESPONDENT

Date of Decision : 11-12-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (2003) 95 CLT 106

Hon'ble Judges : Pradip Mohanty, J

Bench : Single Bench

Advocate : C. Kasturi, Addl. Standing, for the Appellant; A.K. Mishra, P.K. Ghose, S. Latif, D. Chatterjee, B.P. Mohanty, M.R. Mohanty, R.K. Patnaik, S.K. Mishra, S.S. Das and Sk. D. Mohammad, for the Respondent

Final Decision : Dismissed

Judgement

Pradip Mohanty, J.—This first appeal is directed against the order dated 8.12.1995 passed by the Civil Judge (Sr. Division), Deogarh, in Land Acquisition Misc. Case No. 8 of 1995.

2. Aggrieved by the order mentioned above, the State of Orissa through the Collector, Sambalpur, has preferred this first appeal. The claimants are the respondents.

The facts, in brief, of the case are that the Government acquired Ac. 17.20 decimals of land under Holding Nos. 41, 43, 46 and 09 of village Nanei in the district of Sambalpur, which belonged to the claimant-respondents, by Notification No. 83370 dated 23.11.1979 published in E.O.G. No. 2365 dated 12.12.1979 for the purpose of construction of Rengali Multipurpose Project. The Land Acquisition Officer, Bengali Irrigation Project, Sambalpur, awarded compensation of Rs. 72,000/- towards the cost of the above holdings and for the trees standing therein including the tanks, wells and agricultural lands.

The respondent-claimant's case is that there were Gharabaris, trees, tanks and

wells on the Patita lands and agricultural lands of potentiality on the acquired holdings. They claim compensation of Rs. 15,000/- per acre on the market value. Since the award of compensation of Rs. 72,000/- for the acquired holdings is very low, they received the amount on protest. The Land Acquisition Officer, therefore, referred the matter u/s 18 of the Land Acquisition Act to the learned Civil Judge (Sr. Divn.)-cum-Land Acquisition Tribunal, Deogarh, for adjudication.

3. The learned trial Judge after assessing the evidence, both oral and documentary, arrived at the conclusion that the award amount of Rs. 72,000/- awarded by the Land Acquisition Officer was very low. Accordingly the learned trial Judge directed that the claimants are entitled to get compensation of Rs. 1,42,000/- along with all other statutory benefits.

4. During hearing of the appeal, Mrs. C. Kasturi, learned Additional Standing Counsel, argued that the Court below has failed to appreciate the scope and ambit of Sections 23 and 24 of the Land Acquisition Act for determination of the market value. She also argued that the learned trial Judge has not appreciated the evidence on record on its proper perspective and she further submits that the judgment of the learned Civil Judge ought to be set aside on the above grounds.

Mr. A.K. Mishra, learned Counsel appearing for the claimant-respondents, on the other hand submits that the Court below has rightly passed the order after considering the evidence of both parties relating to the market value and the potentiality of the holdings in question. Therefore, there is no illegality committed by the learned trial Judge.

5. The issue involved in this appeal relates to the higher compensation awarded in respect of the acquired lands. The Land Acquisition Officer has awarded Rs. 72,000/- in toto for Ac. 17.80 decimals of land including trees. The respondents have described every thing in their objection-petition regarding the annual income and produce including the trees etc. The respondents claimed compensation of Rs. 15,000/- per acre and Rs. 40,000/- for their trees. The claimant-respondents have received the award of compensation amount with objection.

6. In the instant case, from the side of the claimant-respondents, two witnesses have been examined, P.W. 1 is one of the claimants and P.W. 2 is the independent witness, but no documents have been filed by the claimants. On the other hand, no witness has been examined from the side of the State nor a single scrap of paper supporting the compensation award given by the Land Acquisition Officer has been proved. Nothing has also been elicited by the Land Acquisition Officer from the cross-examination of the witnesses. The learned Civil Judge (Sr. Divn.) after considering the evidence on record has rightly assessed the market rate of Rs. 8,000/- per acre including the trees etc. Accordingly the learned Civil Judge has awarded a total compensation of Rs. 1,52,000/- from all sources. Therefore, the lower Court has rightly assessed the higher compensation as because, the Land Acquisition Award is too low. In the

meantime, more than seven years have lapsed and valuation of lands has gone up. Therefore, there is no reason for this Court to interfere with the impugned order of the learned trial Judge.

7. For the reasons stated above, the first appeal fails and is accordingly dismissed, but no cost.