

(1969) 12 OHC CK 0002
In the Orissa High Court
Case No : M.A. No. 144 of 1964

State of Orissa

APPELLANT

Vs

Kamal Lochan Bohidar and Others

RESPONDENT

Date of Decision : 23-12-1969

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 23(1)
Orissa General Clauses Act, 1937 — Section 22
Orissa General Clauses Rules, 1937 — Rule 1(2), 21

Citation : (1970) 36 CLT 462

Hon'ble Judges : S.K. Ray, J; R.N. Misra, J

Bench : Division Bench

Advocate : K.C. Jagadev Roy, for the Appellant; B. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—This is an appeal u/s 7(3) of Orissa Act 18 of 1948 against the Award passed by the learned Arbitrator, Hirakud Land Organisation, Sambalpur, dated 29- 2-1964.

2. 28.09 acres were acquired pursuant to a notification u/s 3 of that Act which is dated 25-7-1951 and was published in the Orissa Gazette on 11-8-1951. The competent authority had offered compensation of Rs. 9015.31 Paise and the learned Arbitrator has given an additional compensation of Rs. 20,102.39 Paise as he did not accept the same as the proper valuation. He, therefore, gave certain directions to the competent authority for fixing the compensation. The State of Orissa has calculated the said compensation to work out at Rs. 20,102.39 Paise in excess of what had been granted by the competent authority. This excess compensation is the subject matter of the present appeal and the quantum of compensation is the only point for determination in this appeal.

3. Mr. Jagadev Roy, appearing on behalf of the State of Orissa, contends that the learned Arbitrator Acted under an erroneous impression that the acquisition in

this case was subsequent to the Orissa Amendment in 1953 by the Amending Act 13 of 1953 to the Central Provinces Tenancy Act of 1898, by which the lands in question were made transferable. That amendment came into force on 9-7-1953 while the notification u/s 3(1) of Orissa Act 18 of 1948 is dated 11-8-1951 as noted above. He contends that the learned Arbitrator was bound to fix the compensation in accordance with the provisions of the second proviso to Section 7(1)(c) of the Act. This aspect of the matter came up for decision before a Division Bench of this Court in *State of Orissa v. Balaram Dube*. C.L.T. 672. this Court clearly stated thus:

Section 3 of the Act deals with notice of acquisition of land. Sub-section (1) thereof lays down that whenever it appears to the State Government that it is necessary or expedient to acquire speedily any land for the purpose of development of industry, irrigation, agriculture, capital construction or the resettlement of displaced persons or any matter incidental thereto, a notification to that effect shall be published in the Gazette stating the area and the boundaries of the land proposed to be acquired and the competent authority shall cause public notice of the substance of such notification to be given at convenient places on or near the land to be acquired. It would thus be apparent that Sections 3(1) and 4(1) of the Act envisage two different stages. While Section 3(1) pertains to notification of acquisition of land, Section 4(1) deals with service of notice on owner or occupier affected by the notice of acquisition. Thus the vesting of the land in the State Government and the extinction of title of the owner is on the date of service of notice made u/s 4(1) of the Act and has no connection with the notice of acquisition u/s 3(1).

The position has to be determined with reference to the notification u/s 3(1) of the Act and not with reference to the date of service of the notice u/s 4(1) thereof. Relying on the aforesaid proposition in law Mr. Jagadev Roy presses that the basis adopted by the learned Arbitrator is erroneous and the directions given by him are liable to be vacated.

4. Mr. Mohapatra for the Respondents, however, contends that the compensation in the instant case has to be determined under the first proviso to Section 7(1) (e) of the Act, as on the date of the notification the second proviso could not be worked out, the procedure laid down in it having not been complete on the date of acquisition. To understand the contention of Mr. Mohapatra, some reference to the provisions of the Statute would be necessary.

5. Section 7 deals with the method of determining compensation and two alternate processes are indicated. If the amount of compensation can be fixed by agreement, Clause (a) directs compensation to be paid in accordance with such agreement. Where, however, no agreement can be reached, the State Government is required to appoint an arbitrator to determine the compensation. Sub-clause (0) and (d) provide the procedure for taking assistance of assessors. The arbitrator in fixing the compensation is required to have due regard to the provisions of Sub-section (1) of Section 23 of the Land Acquisition Act (Act 1 of

1894). A part of the first proviso to Section 7(1)(e) has already" been declared ultra vires and the part that remains is to the following effect:

Provided that the market value referred to in the first clause 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.

The second proviso contemplates that if the lands which are acquired are not saleable, the market value in respect of such lands is to be a multiple of the deduced rent to be calculated in the prescribed manner with addition of fifty per cent, and the multiple has to be prescribed.

6. The Rules under the Act come into force with effect from 19-6-1950. The Act had, however, been in force with effect from 26-1-49. Under the first proviso to Section 7(1)(e) the market value of the land has to be determined with reference to the date of publication of the notice u/s 3. It has already been held by this Court in *Banamali Babu v. State of Orissa* 27 C.L.T. 125, and *State of Orissa v. Banamali Babu* ILR 1961 Cutt. 451, that if the machinery contemplated under the second proviso is not available on the date of acquisitions compensation has to be fixed under the first proviso as extracted above. Narasimham, C. J., speaking on behalf of a Division Bench, said,

As already pointed out, the Second Proviso is by ,. It self quite unworkable because it leaves every important matter to be prescribed by rules. Hence, until the Rules are framed that Proviso is ineffective for all practical purposes. Doubtless, the Legislature did not expect that there would be such a long interval between the date of coming into force of the Act and the date of framing of Rules thereunder. On the other hand, it appears that though the Act was published in the Orissa Gazette on the 11th January, 1949, Government were authorised by Sub-section (3) of Section 1 of the Act to bring it into force on such future date as they may, by notification, appoint. This power to postpone the coming into force of the Act was obviously given with a view to enable the State Government to make the Rules, in the meantime, and to complete the necessary administrative set-up so that when the Act actually came into operation, there may be no difficulty in working it. Hence, if the Government had immediately taken up the question of making the Rules, after the publication of the Act in the Gazette on the 11th January 1949 and brought it into force as soon as the Rules were ready, then by virtue of Section 22 of the Orissa General Clauses Act the Rules and the Act would have come into force on the same day, and the peculiar difficulty experienced in the present case would not have arisen. But for some inexplicable reason Government brought the Act into force on the 26th January 1949 even though the Rules were not ready till the 19th June 1950. The result is that during this interval some of the provisions of the Act were unworkable, though Section 5 of the Act was fully operative and title vested absolutely in the Government on the date of publication of the notification u/s 4 of the Act.

In the same decision it was further indicated,

The general principle is that if a person's title to the property is completely extinguished, he must get compensation in accordance with the law as it stood on the date of such extinguishment. It may be that, due to some reason or other, there may be considerable difficulty referring the case to the Arbitrator and if, in the meantime, the law relating to compensation undergoes amendment and that amendment is not expressly given retrospective effect, it will not be proper to say that the law as it stood on the date of reference to the Arbitrator should be the relevant law for the purpose of fixing such compensation. Such an argument would, in substance, amount to giving retrospective effect to the Rules, but when Government made the Rules they did not expressly give retrospective effect to them. On the other hand, they expressly stated in the commencement clause Rule 1(2) that the Rules shall come into force only on the 19th June 1950. Hence, the Rules cannot affect the rights which had been vested in certain persons prior to the date of coming into effect of the Rules. I must therefore, hold that the Appellant was entitled to compensation in accordance with the law relating to compensation that was effectively in force on the date on which title to the ryoti lands was extinguished, namely, the 9th April, 1949. At that time the Second Proviso was incomplete as the Legislature did not expect that Proviso to come into operation until it was supplemented by the Rules made under the Act. Hence, the Appellant can justifiably claim compensation according to the market value to be determined in accordance with Sub-section (1) of Section 23 of the Land Acquisition Act.

The principles indicated in the aforesaid decision were reiterated by another Division Bench of this Court in *State of Orissa v. Banamali Babu* 31 C.L.T. 683. It may be pointed out that on the first occasion in 1961 a Division Bench of this Court settled the principles of law and had remanded the matter for determination of the compensation. After the compensation was determined, the case had again come up before this Court in appeal and the other Division Bench on the second occasion reiterated the principles indicated on the earlier occasion.

7. On the basis of the ratio indicated in the aforesaid case Mr. Mohapatra contends that the second proviso continued to be incomplete even on 11-8-1951. Though the Rules had been brought into force on 19-6-1950 as indicated above, the multiple had not been notified as required under the second proviso to Section 7(1)(e) of the Act. It is conceded at the Bar on behalf of the Appellant that until the multiple is fixed compensation cannot be worked out and, therefore, until the multiple is prescribed the proviso cannot be operated. Mr. Mohapatra, therefore, contends, that the principle as indicated by the Division Bench of this Court in *Banamali Babu v. State of Orissa* ILR 1961 Cuttack 443; *State of Orissa v. Banamali Babu* ILR 1961 Cutt. 451, has full application to the facts of the present case, and in view of the fact that the multiple was prescribed by notification subsequent to 11-8-1951, compensation was to be fixed in the present case under the first proviso, that is, on the basis of the provisions of Sub-section (1) of Section 23 of the Land Acquisition Act, and the special procedure indicated in the second proviso cannot be applied.

8. Mr. Jagadev Roy contended that there was a notification earlier to 11-8-1951 by which the multiple had been prescribed and had taken time to produce the said notification. According to Mr. Jagadev Roy, the Revenue Department of the State Government had determined the multiple and he seeks to make a reference to the said decision of the Government and contends that there was satisfaction of the requirements of the second proviso to Section 7(1)(e) of the Act. As we have already indicated, what is required by the second proviso is that the multiple has to be prescribed. Rule 21 of the Rules is to the following effect:

The market value of lands which are not saleable, shall be such multiple of the deduced rent as may be notified by the State Government from time to time.

"Notification, has been defined in the Orissa. General Clauses Act as "notification in the State Gazette". The word "may" in Rule 21 is bound to be read as "shall" inasmuch as this Rule and the Act under which the rule is framed relate to acquisition of properties of citizens and in that background the prescription of the multiple by notification must be strictly done as required under the law. We find it difficult on our part to accept the contention of Mr. Jagadev Roy that the decision of the Revenue Department in the Secretariat files can be taken as compliance with Rule 21 of the Rules. We will proceed on the basis that there is no notification. Once it is held that without the prescription of the multiple the second proviso cannot be worked out, it must necessarily follow that the principle indicated in *Banamali Babu v. State of Orissa* 27 C.L.T. 125 : ILR 1961 Cuttack 443, is attracted and the compensation has got to be fixed with reference to Section 23(1) of the Land Acquisition Act (1 of 1894). The learned Arbitrator seems to have done that and no objection is available against the award. In the circumstances, we would dismiss this appeal and affirm the Award of the learned Arbitrator. The Respondents would be entitled to their costs throughout.