

(2006) 08 OHC CK 0041
In the Orissa High Court
Case No : First Appeal No. 238 of 1999

State of Orissa (L.A. Zone Officer)

APPELLANT

Vs

Giridhari Nayak

RESPONDENT

Date of Decision : 02-08-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4(1)

Citation : (2006) 2 OLR 329

Hon'ble Judges : A.K. Parichha, J

Bench : Single Bench

Advocate : Sangram Das, Addl. Standing, for the Appellant; None, for the Respondent

Judgement

A.K. Parichha, J.—This appeal has been preferred against the judgment dated 18.12.1998 passed by the learned Civil Judge, Senior Division, Deogarh in L.A. Case No. 128 of 1998 in response to a reference made u/s 18 of the Land Acquisition Act, (hereinafter called "the Act").

2. Government of Orissa acquired Ac.8.94 dec. of land out of Khata No. 48 of village Bhatasingh in the district of Deogarh belonging to the respondent for the purpose of Rengali Dam Project vide Notification dated 24.5.1980 issued u/s 4(1) of the Act and awarded a compensation of Rs. 31,906.10 paise to the respondent who had half share in the acquired land. The respondent felt that the compensation paid is grossly inadequate and prayed for referring the matter to the Civil Court u/s 18 of the L.A. Act. On such reference being made by the Land Acquisition Officer the matter came up before the learned Civil Judge (Sr. Division), Deogarh. In the L.A. Case the respondent examined 2 witnesses. The State did not adduce any evidence at all. Considering the available evidence and the surrounding circumstances, learned Civil Judge determined the annual yield and income of those lands and using 16 multiplier assessed the market value of the acquired lands. In the process the compensation amount got enhanced to Rs. 86,038.56. The present appeal is against that order.

3. Mr. Sangram Das, learned Addl. Standing Counsel appearing on behalf of the State-appellant submits that the annual yield and income determined by the learned Civil Judge is based totally on surmise and guess work; that without assigning any reason uniform rate of compensation has been fixed for different varieties of lands; that use of 16 multiplier for determining the value of the lands is contrary to the ratio laid down by the apex Court in the cases of State of Haryana Vs. Gurcharan Singh and another etc., ; Airports Authority of India Vs. Satyagopal Roy and Others, . According to him, because of the above noted lacuna, the impugned order is unsustainable. He prays that the order impugned be vacated and the compensation fixed by the Land Acquisition Officer be maintained.

4. No argument is offered from the side of the respondent.

5. There is no dispute that Ac.8.94 decimals of land belonging to the respondent and his co-sharer was acquired by the State of Orissa for Rengali Dam Project and that compensation of Rs. 31,906.10 paise was awarded by the L.A.O. in favour of Respondent for his half share in the acquired land. The sole dispute is whether the rate of compensation fixed by the Land Acquisition Officer was adequate or not. During the enquiry in the L.A. Case none of the parties adduced any evidence regarding the sale statistics of similar lands situated in the locality at the relevant point of time. Evidence was led simply about the annual yield and income of the acquired lands for which learned Civil Judge adopted multiplier method for determining the value of the acquired land. In this connection, only the evidence of P.Ws. 1 and 2 are available for consideration. Both witnesses stated that paddy and monocrops were being raised in the acquired land and that annual yield of paddy was 20 quintals and mung was 4 quintals per acre. Those witnesses also stated that at the relevant point of time the market rate of paddy was Rs. 2507/- per quintal and mung was Rs. 1000/- per quintal. No rebuttal evidence was adduced from the side of the State. Learned Govt. Advocate appearing on behalf of the State simply put suggestions to the witnesses for the claimant that the annual yield was 4 to 5 quintals of paddy and 30 to 40 K.Gs. of mung per acre and that the rate of paddy was Rs. 120/- and mung Rs. 400/- per quintal. Considering the fact that there was no rebuttal evidence to the statement of P.Ws. 1 and 2 and also taking note of the fact that the suggestion of the learned Govt. Advocate was unreasonable, learned Civil Judge adopted a mean path between the two submissions and lacing it with his judicial commonsense fixed the annual yield at 8 quintals of paddy and 1 quintal of mung per acre and the rate of paddy at Rs. 150/- and mung at Rs. 600/- per quintal. Then he calculated the net income by deducting the agricultural expenses from the gross income of the land and used 16 multiplier on the net income to assess the value of the lands in question.

6. When there was no documentary evidence from either side and when there was no rebuttal evidence at all from the side of the State some amount of reliance had to be placed on the evidence of p.ws. 1 and 2, who had given their

statements on oat, and some amount of commonsense and guess work had to be used by the Court about the annual yield of the lands. Such approach cannot now be termed as arbitrary or imaginary. The conclusion of the learned Civil Judge in this regard being reasonable and not being repugnant to commonsense and equity can be accepted.

7. Learned Additional Standing Counsel claims that use of 16 multiplier by learned Civil Judge in the present case was incorrect as the acquired lands were un-irrigated agricultural lands for which apex Court have fixed 12 multiplier as the highest limit. He cited some case laws in this regard. In the case of Executive Director v. Sarat Chandra Bisoi and Anr. AIR 2000 SC 2619 a matter relating to compensation of some Sarada I Dofasali and Taila lands of Dhenkanal district came up for consideration before the apex Court. Considering the facts and circumstances of the case particularly the fact that the Taila lands were situated close to the National Highway the value of the land was fixed using 16 multiplier, but no ratio was laid down to be followed as general principle. In the case of State of Orissa Vs. Kapila Sabar and Another, learned Single Judge of this Court after taking note of several previous decisions of this Court and the apex Court observed that no fixed ratio having been laid down by the apex Court about the multiplier to fix the value of the acquired lands and this Court having adopted 16 multiplier in some of the cases, adopted 16 multiplier. In that decision although the reference was made to the case of State of Haryana Vs. Gurcharan Singh and another etc., no observation was made as to whether the ratio laid down in that case should be followed or not. In Gurcharan Singh's case (supra) after indicating the mode of determining the compensation for agricultural land and land having fruits bearing trees, apex Court observed that under no circumstance the multiplier should be more than 8 years for land having fruits bearing trees on it and 12 years for agricultural land. The said observation made by the apex Court is extracted below for proper understanding and appreciation.

... Under no circumstances, the multiplier should be more than 8 years multiplier as it is settled law of this Court in catena of decisions that when the market value is determined on the basis of the yield from the trees or plantation, 8 years multiplier shall be appropriate multiplier. For agricultural land 12 years multiplier shall be suitable multiplier.

This observation was approved by a larger bench of the apex Court comprising of three Hon'ble Judges in the case of Airports Authority of India (supra) with the following observations:

Hence, in our view, there was no reason for the High Court not to follow the decision rendered by this Court in Gurcharan Singh's case (supra) and determine the compensation payable to the respondents on the basis of the yield from the trees by applying 8 years multiplier. In this view of the matter in our view, the High Court committed error apparent in awarding compensation adopting the multiplier of 18.

8. From the above noted decisions of the apex Court it can safely be gathered that normally 8 multiplier should be used for land having fruits bearing trees and 12 multiplier for agricultural lands. Deviation from this principle can be made only if there is compelling and special circumstances available in the case.

9. In the present case, the evidence of P.Ws. 1 and 2 is to the effect that the acquired lands were purely agricultural lands, where paddy and mung were being grown every year. No special circumstance has been pleaded or proved to show that the lands were in some way extraordinary and do not come under the normal agricultural land. That being so, the ratio laid down in Gurcharan Singh's Case (supra) would apply and 12 multiplier to the annual net income would be available. Learned Civil Judge however did not consider the above noted legal aspects and used 16 multiplier, which appears to be on the higher side under the given circumstances. Therefore, the amount of compensation should be modified and determined by using 12 multiplier instead of 16.

10. For the aforesaid reasons, the impugned order is modified. The compensation for the acquired land of the respondent be determined by using 12 multiplier to the annual income, which has been assessed by the learned Civil Judge in the Land Acquisition Misc. Case.

11. Accordingly, the appeal is allowed in part, but in the peculiar circumstances without any cost.