
(1961) 03 PAT CK 0016

In the Patna High Court

Case No : A.F.O.D. No's. 271 and 302 of 1955

Surendra Nath Biswas and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 22-03-1961

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 23(1), 23(2), 28, 3(1)

Citation : AIR 1962 Patna 406

Hon'ble Judges : Ramratna Singh, J;Kanhaiya Singh, J

Bench : Division Bench

Advocate : Rai Paras Nath and Brishketu Saran Sinha, for the Appellant; B.C. De and A.K. Chatterji, for the Respondent

Judgement

Ramratna Singh, J.—These appeals arise out of an award-decree made by the Judicial Commissioner of Ranchi in a reference u/s 18 of the Land Acquisition Act (hereinafter to be referred to as the Act). F. A. No. 271 of 1955 has been preferred by the claimants Sri S. N. Biswas and Sri M. M. Sur, while F. A. No. 302 of 1955 has been preferred by the Deputy Commissioner and the Land Acquisition Officer, Ranchi.

2. In 1936 the claimants had purchased for a sum of Rs. 25,000 an area of 194.34 acres containing several thousands of lac bearing trees and some buildings in villages Kokrana and Muri of Ranchi district. In 1943 the Indian Aluminium Production Company negotiated for the purchase of 173.52 acres of this land in village Kokrana with 14,000 lac bearing trees and buildings with the claimants; and an agreement for the sale of the same to the Company for a sum of Rs. 2,00,000 was signed on the 20th February 1944 between the parties and the Company paid a sum of Rs. 10,000 as earnest money.

The interest of this company then passed to the Indian Aluminium Company, which repudiated the agreement and requested the Government for acquisition of the area. The government issued a notice u/s 4 of the Act in August 1944 containing a proposal to acquire 189.84 acres belonging to the tenants. Later, a

decision was made to reduce this area by .70 acre on which the claimants' house stood. But a modified notice was never issued. A declaration u/s 6 of the Act was ultimately made on the 5th February 1945 for only 189.14 acres. But ultimately the present proceeding was concerned only with 171.15 acres of land along with the lac plantation. Another proceeding was started in respect of .70 acre containing the house of the claimants and the same has already been acquired and the claimants have been paid Rs. 14,000/- as compensation for the same.

3. In March-April 1945 the claimants claimed a sum of about Rs. 9,00,000 besides statutory compensation at Rs. 15/- per cent. in respect of 173.51 acres of land with the plantation. By the award the claimants were allowed about Rs. 21,500 for the land and about Rs. 82, 700 for the plantation, inclusive of statutory compensation. The claimants were not satisfied with this rate and claimed Rs. 50,000 for the land and Rs. 2,55,000 for plantation, besides statutory compensation and interest.

The learned Judicial Commissioner found, on the basis of the agreement between the Indian Aluminium Production company and the claimants, that the market value of 173.52 acres with buildings and plantations would be Rs. 2,00,000 on the date of the notice u/s 4 of the Act. Then, he has deducted a sum of Rs. 10,000 paid as earnest money to the claimants and Rs. 14,000 paid to the claimants as compensation for .70 acre with buildings in the other case. Two plots measuring an area of .62 acre had already been settled by the claimants with tenants on a rental of Re. -/10/- and in respect of the same the claimants have been awarded a sum of Rs. 12/8/- as capitalised value of the rental and the tenants have been awarded a sum of Rs. 308/8/-. Another small plot having an area of .05 acre was excluded from the acquisition and the Judicial Commissioner valued the same at Rs. 25. He deducted these amounts also from Rs. 2,00,000 and ordered that the claimants were entitled to get a sum of Rs. 71,529/4/- besides Rs. 1,04, 137/4/- which has been awarded and paid to the claimants by the Land Acquisition officer. He further held that the statutory compensation at Rs. 15 per cent. should not be allowed separately and should be deemed to have been included in the sum of Rs. 71,529/4/-. He did not also allow any interest to the claimants u/s 28 of the Act. Hence, the appeal by the claimants for increasing the amount of compensation and also for the statutory compensation and interest. The other appeal has been preferred for reduction of the amount of compensation,

4. On behalf of the claimants-appellants it was contended, that the judicial Commissioner ought to have valued the lac bearing trees separately from the land on which they stand. They claimed about Rs. 3,00,000 for these trees besides Rs. 5,00/- per acre for the land, Rs. 15,000 for the structures and Rs. 2,000/- as the cost of their removal. Admittedly, there are more than 13,000 lac bearing trees on the land. For their value reliance was placed on the report of one Mr. Nicholson, Provincial Research Officer, submitted in the land acquisition case of 1924-25.

At that time the Government proposed to acquire a small area of 3.78 acres with 1,000 lac bearing trees out of the area now acquired. The owner of the whole area with trees thereon was then the Chotanagpur Lac Production Company, the predecessor-in-interest of the present claimants. Two of the directors of the Company, namely, S. N. Biswas (one of the present claimants) and Sri P. K. Banarji, advocate, made a claim for Rs. 4,50,000 for the aforesaid small area. As a result of this claim, the area proposed to be acquired was reduced from 3.78 acres to 1.26 acres. The Land Acquisition Officer sought the opinion of Mr. Nicholson who, thereupon, submitted the report referred to above. Mr. Nicholson valued the area of 1.26 acres with 180 lac bearing trees at about Rs. 1800 and estimated a sum of about Rs. 3200 as compensation for severance and the statutory compensation came to about Rs. 3,000.

Ultimately, because of the high claim and the high value estimated by Mr. Nicholson, the Government gave up the idea of acquiring even 1.26 acres. That Mr. Nicholson's opinion was wrong is proved by the fact that the present claimants purchased the entire area of 189.84 acres (including the plantations and structures) from the Chotanagpur Lac production Company for Rs. 25,000/- only in 1936 and the claimants struck down their claim in the present proceeding to about Rs. 3,00,000 only. The price paid by the claimants to their vendors comes to about Rs. 125 per acre including the land, plantations and structures, whereas in the Collector's award in the present proceeding the claimants have been allowed about Rs. 600 per acre besides the value of the buildings. It is true that since 1936 the prices have gone up very high on account of the last war: but the compensation allowed in the Collector's award comes to about five times of the price paid in 1936. It is also remarkable that the claimants have not produced account books of their lac business to show the income from these plantations on the plea that they have been destroyed. But the claimant Sri Sur is himself a big businessman and he keeps his accounts separately. It is not alleged that his separate accounts have also been destroyed. Apparently, these separate accounts would have shown what income he derived as his share from the lac plantations between 1936 and 1944.

5. Learned advocate for the claimants has referred to three documents to show the value of land prevailing in the vicinity. Exhibit 1 is a registered sale deed dated the 2nd July 1942 executed by the Deputy Commissioner of Ranchi on behalf of the Government of Bihar in respect of an area of .896 acre or 2 bighas 14 kathas and odd which was sold for Rs. 1100 Exhibit 2 is another registered sale deed by the Deputy Commissioner of Ranchi of the same date under which an area of .79 acre or 2 bighas 7 kathas and odd was sold for Rs. 560/-. The average price per acre under these sale deeds comes to about Rs. 1200 and 700 respectively; and the pieces of the land covered by the sale deeds are to the left of the railway line in village Muri, while village Kokrana in which the area proposed to be acquired is situated is to the right side of this railway line. The third document is a lease (ext. 3) dated the 4th September 1944 under which an area of .25 acre was settled in village Muri for building purposes on payment of

Rs. 300 as Nazrana. The value under this lease would work out at Rs. 1200 per acre.

On the other hand, the Government pleader has relied on two sale deeds dated the 2nd July 1947 (exts. A and B) executed by the Deputy Commissioner of Ranchi on behalf of the Government of Bihar. The pieces of the land covered by these sale deeds are also in village Muri and they are portions of plot No. 632 of which the pieces of land covered by exhibits 1 and 2 also formed a part. The sale rate under exhibits A and B works out at about Rs. 150/-per acre. It is obvious that even portions of plot No. 632 have different advantages and, therefore, there is a great disparity between the sale rates in exhibits A and B and those in exhibits 1 and 2. As already stated, the lease was for building purposes. Hence, it is not safe to act on the basis of any of these five documents.

6. The Government pleader is right in contending that in the case of any land if it is almost wholly covered with trees, the market value should be determined for the land including the trees as a whole and not by valuing the trees separately from the land. This view is supported by the decision in *Elias M. Cohen v. Secy. of State* 2 Pat LJ 615 : AIR 1918 pat 625 (2)). This principle is applicable, because the land wholly covered with trees cannot yield any usufruct independent of the usufruct of the trees, and, without the trees such a land would have very little value. Moreover, according to the definition in Section 3(1) of the Act, the word "land" includes standing trees.

7. Admittedly, there was an agreement on the 20th February 1944 between the Indian Aluminium Production Company the predecessor-in-interest of the Indian Aluminium Company, and the claimants for the purchase of this land with trees and structures thereon for a sum of Rs. 2,00,000. The company agreed to pay this price on the report of one of its officers, Mr. Shabarwal dated the 26th August 1943 (Ext. 58). This officer inspected the plantations, had discussion with Sri S. N. Biswas, one of the claimants, consulted the entomologist of the Indian Lac Research Institute, Namkum, the landlords of the neighbouring villages and also inspected 100 sale deeds executed between 1941 and 1943 in respect of lands of different villages and submitted an exhaustive report. On the basis of this report the Indian Aluminium Production Company and the claimants arrived at an agreement dated the 20th February 1944 under which the Company agreed to purchase 173.52 acres for a sum of Rs. 2,00,000 and paid Rs. 10,000 as earnest money to the claimants. Admittedly, Shabarwal became an employee of the Indian Aluminium Company and he continues still to be in their employment. One of the terms of this agreement was that, subject to the vendors' making out a good marketable title to the said properties to be sold, the sale shall be completed within three months; but the Indian Aluminium Company when it purchased the interest of the other Company, repudiated this agreement, probably because they thought that acquisition under the Land Acquisition Act would confer a good title on them or that they would be able to acquire the land for a smaller sum through the Land Acquisition Department.

8. The Judicial Commissioner has rightly observed that the private agreement in respect of the land proposed to be acquired freely entered into between the parties should carry more weight in determining the market value of the land u/s 23 of the Act than a value calculated somewhat arbitrarily on the basis of the deeds of transfer in respect of pieces of land, which show highly varying sale rates.

In AIR 1922 365 (Privy Council) their Lordships of the Judicial Committee observed as follows:

"If the parties before the institution of the proceedings contemplated by that Act, chose to agree, they were perfectly competent to do so and there is nothing whatever in the words of the Act to suggest that this power is thereby taken away. The Act certainly does not directly affect such a result, nor can their Lordships ascertain any reason why the fact that compulsory powers have been invoked in order to secure property from unwilling vendors, should be regarded as denuding all parties of rights they possessed before the proceedings began.

* * * * * Their Lordships" opinion is not intended to interfere with the jurisdiction of the Collector. It may be a very unusual thing that he should proceed to determine what in his view the price should be, after he had evidence of a complete contract on the point, but if he thought right to do so their Lordships" judgment will not affect his taking such a course".

In view of the facts and circumstances discussed in the preceding paragraphs, the learned Judicial Commissioner has rightly accepted the value given in this agreement as the best criterion for determining the market value of the acquired property u/s 23 of the Act.

9. The reasons given by the learned Judicial Commissioner for not allowing the statutory compensation of fifteen per centum are these;

"It appears from Mr. Shabarwal"s report that he had recommended to increase the value arrived at by accepting the figures given to him by the Land Acquisition Officer and the land, lords by 20 to 25 per cent. When he first suggested Rs. 1,38,500 as the fair price, this figure did not include the 25 per cent, increase, as recommended by him. But when the figure was ultimately raised to Rs. 2,00,000 at the time of the final agreement, I presume that the increase was due to the acceptance of his recommendation to increase the value by 20 or 25 per cent. I have mentioned all these facts just to show that the claimants are not entitled to any further sum as statutory compensation. Expressed in a different way, this statutory compensation at 15 per cent should be considered as included in the sum of Rs. 71,529/4/-."

These reasons are not at all valid for dis-allowing the statutory compensation; and, as rightly contended by learned advocate for the claimants, the court is bound to allow the statutory compensation of fifteen per centum on the market value of the land u/s 23(2) of the Act, in consideration of the compulsory nature

of the acquisition. It will be remembered that it was the company which repudiated the agreement arrived at between its predecessor-in-interest and the claimants for the purchase of the land including the plantation and the structures, and the claimants had to suffer some loss on account of interest that they would have earned on the amount agreed upon between the time when the sale deed was to be executed and the date when the land acquisition proceedings were started. Moreover, even the claimants had not agreed to the price recommended by Mr. Shabarwal on the basis of the sale rates obtained from the Land Acquisition Officer and the landlords and it was only when the price calculated on the basis of these sale rates was increased by 20-25 per cent that an agreement was arrived at for the purchase of the land including the plantations and the structures.

It will, therefore, be unfair to deprive the claimants of the statutory compensation on the ground of this increase of 20-25 per centum. Moreover, when the market value has been determined at Rs. 2,00,000 on the basis of the agreement the court is bound to add to this value a sum of amounting to fifteen per centum thereof as the statutory compensation u/s 23 (2) of the Act; and the same shall be allowed to the claimants,

10. As already stated, the sum of Rs. 2,00,000 was the price fixed for an area of 173.62 acres out of which Rs. 10,000 was paid as earnest money. The learned Judicial Commissioner has deducted therefrom a total sum of Rs. 24,333/8/-, which is made up of Rs. 10,000, already paid as earnest money, Rs. 25 being the price of .05 acre which was excluded from the acquisition, Rs. 14,000 as compensation already paid to the claimants in respect of .70 acre with buildings standing thereon and a sum of Rs. 303/8/- paid as compensation to some tenants, in respect of an area of .62 acre which was settled by the claimants with those tenants after the agreement.

The learned advocate for the claimants did not challenge these deductions except the deduction of the earnest money, namely, Rs. 10,000 which, according to him, should be deemed to have been forfeited to the claimants on the repudiation of the agreement. But the claimants are not entitled to treat this sum of Rs. 10,000 as forfeited, when the total price (including this sum settled under the agreement is accepted as the market value on which the statutory compensation must be allowed. For the purpose of the statutory compensation, the earnest money of Rs. 10,000 must be included in the market value. Hence, a sum of Rs. 14,333/8/- only shall be deducted from the total amount of Rs. 2,00,000; and the statutory compensation shall be calculated on the balance amount, that is Rs. 1,85,666.50 np. Out of the total amount made up of Rs. 1,85,666.50 np. and the statutory compensation so calculated, a sum of Rs. 1,14,137.25 (that is, earnest money of Rs. 10,000 plus 1,04,137.25 np. already paid to the claimants according to the award of the Collector) shall be deducted; and the claimants shall now get the balance arrived at after this deduction.

11. Learned advocate for the claimants-appellants has then challenged the

finding of the judicial Commissioner disallowing interest on this balance amount. It was conceded that Section 28 of the Act would apply for the purpose of interest on this amount, under this section, the court has a discretion to allow interest at the rate of six per cent per annum from the date on which the Collector took possession of the land to the date of payment of the balance amount. The learned Judicial Commissioner has refused to allow any interest on the ground that in January 1955, when he wanted to take up the hearing of the case, the claimants requested for adjournment, and a suit in the Calcutta High Court was filed to enforce the aforesaid agreement which they ultimately allowed to be dismissed for default in the expectation that they would get more compensation in this proceeding. But even the excess; amount allowed by the award-decree of the Judicial Commissioner has not yet been paid to the claimants. In the circumstances, the claimants shall be allowed interest at six per cent per annum from the date of the decree of the judicial Commissioner on the excess amount now payable to the claimants in accordance with the finding in the preceding paragraph.

12. In view of the above findings, the claimant's appeal No. 271 is allowed in part and the other appeal No. 302 is dismissed. In the circumstances, the parties will bear their own costs of the appeals.

Kanhaiya Singh, J.

13. I agree.