

(2008) 04 OHC CK 0011
In the Orissa High Court

The Executive Director, NALCO Ltd. and Others

APPELLANT

Vs

Prasanna Behera and Others

RESPONDENT

Date of Decision : 11-04-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4

Citation : (2008) 106 CLT 174 : (2008) 1 OLR 977 Supp

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Judgement

Sanju Panda, J.—Since all these appeals arise out of a common award, those were heard together and are being disposed of by this common Judgment.

2. These first appeals are directed against the common Judgment 16.4.2001 passed by the Learned Civil Judge (Senior Division), Angul in Land Acquisition Misc. Case" Nos.76 of 1988, 133 of " 1988, 179 of 1987, 180 of 1987, 182 of 1987, 185 of 1987, 186 of 1987, 187 of 1987, 189 of 1987, 190 of 1987,200 of 1987, 25 of 1988,60 of 1988,64 of 1988,65 of 1988,77 of 1988,78 of 1988, 126 of 1988, 132 of 1988,186 of 1988, 189 of 1988,191 of 1988, 193 of 1988, 197 of 1988 & 201 of 1988, 68 of 1992, 14 of 1989, 15 of 1989, 16 of 1989, 24 of 1989,27 of 1989, 182 of 1988, 177 of 1988, 180 of 1988, 203 of 1988, 68 of 1992 and 8 of 1989 in answering the reference u/s 18 of the Land Acquisition Act (hereinafter referred to as "the Act").

3. The above references were earlier disposed of by the Learned Civil Judge (Senior Division), Angul on 12.11.1996 against which award First Appeal Nos.146 of 1997 and batch were filed before this Court and this Court remanded the matter to the Referral Court for fresh disposal after giving opportunity to the Parties to adduce further evidence. On remand, the impugned award has been passed.

4. The fact situation in all these appeals i.e. the notification, the village and the category of land, being similar, for convenience, the brief facts of the first case

i.e. First Appeal No. 115 of 2001 are narrated as follows;

5. By virtue of Government Declaration No. 11803 dated 9.2.1988 which was published in EOG No. 237 dated 20.2.1982, a large tract of land of different claimants in village Gotamara in the district of Angul was acquired for the purpose of NALCO project. It is not in dispute that Angul is an industrially developed town and it was declared as a Notified Area Council prior to the date of acquisition of the land. The locality where village Gotamara is situated, several residential houses, shops, bazaars, etc. have been established. The acquired lands are connected with N.H 42 and N.H 6. Talcher, Banarpal Thermal Power Station, Fertilizer Corporation of India, etc. are situated in the locality for which the demand of the land and its price are rising from day to day. The lands were irrigated by Derjang Project and the owners were getting three crops in a year from the irrigated lands. So far as Taila kissam land, Baje fasal, Sarad-III, Patita variety of land are concerned, all these types of lands are similar type of land and are usually high level lands. Though the agricultural products are grown less from these type of land, the people are getting financial crops (Black-gram, Bengal-gram, Ragi, Muga, Biri, etc.) from their lands. The agriculture depends upon the rain in these type of land, These lands are fit for homestead.

6. The Land Acquisition Collector determined the compensation at Rs. 12,500/- per acre in respect of all types of land of village Gotamara. The claimants received the said compensation on protest and filed their objections for Higher compensation on the ground that the Land Acquisition Collector determined the valuation of the land at a lower rate. Since the area is an industrially developed area and many industries have already been established there, the price of the land in the area was rising from day to day. Considering the potency of land for homestead, the compensation for the acquired land should be at a higher rate than what has been determined by the Land Acquisition Collector and they are entitled to higher compensation because earlier in similar Land Acquisition Proceedings, the Apex Court determined the compensation at the higher rate, i.e., Rs. 27,000/- per acre for Sarad-I land and the lands which are connected to National Highway. So far as lands connected to Grama Panchayat road and other roads are concerned, the Apex Court has determined the compensation at Rs. 22,500/- per acre and rest land at Rs. 18,000/- per acre of land acquired under the notification published in early 1980's.

7. The Land Acquisition Collector filed a common counter to the above objection justifying the compensation determined by them as just and proper. According to the Land Acquisition Collectors, most of the claimants have transacted the acquired lands just prior to the acquisition in order to get enhanced compensation and those transactions should not be taken into consideration while determining the just compensation and they have awarded 3 to 5 times more than the prevailing rates. As such, no further enhancement should be granted.

8. The claimants in support of their claim for higher compensation adduced oral

evidence as well as documentary evidence, i.e., registered sale deed, certified copy of the Judgment in Land Acquisition Misc. Case No. 6/92, the map of village Gotamara and copy of Judgment of the Apex Court. The Land Acquisition Collector examined one witness i.e. R.I. of village Gotamara and filed the certificate of encumbrance of property of village Gotamara. The Referral Court, after analyzing the materials available on record and taking note of the several decisions, came to a finding that as all types of land are treated as Taila variety of land, the same amount of compensation is to be paid on the admitted facts. The evidence available on record further reveals that village Kulad is a nearby situated village of Gotamara. The Notification u/s 4(1) of the Act was published on 13.7.1981 for acquisition of large tract of land in village Gotamara for the purpose of NALCO Project. So far as village Kulad is concerned, for the land acquired under the notification of the same year, the compensation has been determined at the rate of Rs. 27,000/- per acre for the land adjoining to NH 42 and NH 28, Rs. 22,500/- per acre for the land adjoining to the Panchayat road and Rs. 18,000/- per acre for other lands which did not adjoin to any road. It has also been held that the claimants are entitled to solatium and other statutory benefits as provided under the Land Acquisition Act. (See AIR 2000 SC 2619, The Executive Director v. Sarat Chandra Bisoi)

9. The Learned Counsel appearing for the Appellant-NALCO submitted that the Referral Court has not taken into consideration the fact that the claimants have transacted the lands at a lower price prior to the acquisition. Had the Referral Court taken into consideration the said fact, it would have confirmed the award passed by the Land Acquisition Collector which was admittedly higher side than at which the claimants had transacted. Since a large tract of land has been acquired and the Land Acquisition Collector has not referred the objections to the Civil Court immediately, the Appellant-NALCO is not liable to pay interest on the compensation amount for the delay-caused in referring the objection to the Civil Court. Thus, interference with the impugned award passed by the Court below is warranted.

10. The Learned Counsel appearing for the claimants, on the other hand, submitted that the Referral Court has taken into consideration the evidence adduced by the claimants regarding situation of the village which is similar to that of village Kulad in respect of which the Apex Court has determined the higher compensation taking into consideration the potential value of the land and other topographical situation. Therefore, the award passed by the Referral Court is just and the same need not be interfered with by this Court.

11. The Addl. Standing Counsel was heard on behalf of Opposite Party No. 4 the Special Land Acquisition Officer, NALCO quite at length.

12. From the records, it appears that the following facts are admitted by the parties. The civil township and supporting services are available nearby the acquired land and NH 42 and NH 23 are adjoining to the village Gotamara and Panchayat roads are adjoining to the acquired lands and some lands were not

connected with any roads. Thus, the acquired lands were categorized into four types, namely, Sarad-III, Bajefasal, Taila and Patita variety of land. Derjang Irrigation Project is situated nearby the acquired land. Electric lines and telephone lines are available to the acquired land. In the vicinity, High school, Jvl.E. school, Lift Irrigation Office, R.I. Office, factories, etc. are situated. Some lands are also fit for homestead, i.e., Gharabari. On 27.5.1982, the Collector of Dhenkanal District which is the Revenue District (before bifurcation and creation of Angul District) addressed a letter to the Divisional Commissioner stating therein that the rate of land was determined at a lower side i.e. at Rs. 12,500 for cultivable land. Rs. 7,500/- for Barren land and recommended that Rs. 22,000 per acre for cultivable land and Rs. 12,500/- per acre for barren land is reasonable compensation (emphasis supplied). As per the decision referred to above in AIR 2000 SC 2619, this Court has categorized the land into three categories, first, the land near the National Highway, secondly, the land by the side of Grama Panchayat road and thirdly, the other lands which were not connected with road and determined the market value thereof.

13. The Referral Court also adopted the same principle and categorized the land into three types and the parties are not disputing the said fact. This Court, after analyzing the arguments advanced by the Learned Counsel for the parties and verifying the record, finds that a large tract of agricultural lands has been acquired for NALCO project and more than 25 years have passed in the meantime from the date of notification. Though ordinarily the method adopted to determine the compensation is the year of notification u/s 4(1) of the Act, since in the present case transactions were made showing the price of the land in the same year of notification or one year prior to the same, the compensation should be determined on the basis of those sale deeds which are contemporaneous documents. In the present case, though claimants have filed some sale deeds in support of their claim for higher compensation, the Respondents refuted the same on the ground that the claimants have transacted the land at a very lower price, but the Land Acquisition Collector has determined at a rate 2 to 5 times more than that. Thus, the documentary evidence adduced by the claimants for higher compensation showing the sale transactions should not be taken into consideration. Both the parties have adduced evidence in support of their respective claims. Law is well settled that individual sale transactions sometimes take place due to illness, marriage and other problems. A willing purchaser may offer high price for his choice of land or looking into the present situation may also sale the land at a lower price.

14. Therefore, considering the admitted facts in these cases that the acquired lands are adjoining to the National Highway and Grama Panchayat road is available nearby to some of the acquired lands and the area has been industrially developed and the other material facts, the Apex Court has already determined the valuation at Rs. 27,000/-, Rs. 22,500/- and Rs. 18,000/- respectively per acre of the three categories of land situated nearby village Kulad. Contemporaneous transaction and previous award would no doubt be evidenced

for determination of market value. The previous award has also evidentiary value to consider the question of market value of the acquired land. This view is taken by relying upon the decision of the Supreme Court in the case of Bhim Singh & Ors. etc. etc. v. State of Haryana and Anr. reported in 2003 (11) SBR 412. Therefore, on the facts and circumstances, of these cases, the valuation of the acquired land determined by the Referral Court at Rs. 27,000/- per acre for the land adjoining to the National Highway, Rs. 22,500/- per acre for the land connected to the Grama Panchayat road and Rs. 18,000/-for other land, is just and reasonable. Thus, this Court confirms the common Judgment dated 16.4,2001 passed by the Learned Civil Judge (Senior Division), Angul in the aforesaid Land Acquisition Misc. Cases.

15. As regards the delay in referring the matter to the Civil Court, it appears that the delay has occurred on the hands of the Government officials. Therefore, the beneficiary, i.e. NALCO, should not be liable to pay the interest for the said period nor should the claimants be deprived of the benefits also. The State Government shall bear the liability which has arisen due to the delay in referring the matter to the Civil Court, as has been decided in the case of Mangat Ram Tanwar and another Vs. Union of India, . However, it is open to the Secretary to Government, Revenue Department to look into the cause of delay and issue necessary instructions for taking early action on the reference petition in future.

16. The appeals are allowed in part.