

(1975) 04 GAU CK 0001
In the Gauhati High Court
Case No : F.A. No. 63 of 1967

The Kacharigaon Tea Co. Ltd.

APPELLANT

Vs

The Collector of Darrang

RESPONDENT

Date of Decision : 03-04-1975

Acts Referred:

Evidence Act, 1872 — Section 11, 13, 18, 40, 43
Land Acquisition Act, 1894 — Section 18, 23(2), 28, 34, 4

Citation : AIR 1975 Guw 78

Hon'ble Judges : D. Pathak, J; B.N. Sharma, J

Bench : Division Bench

Advocate : S.R. Khaund and P.K. Goswami, for the Appellant; D.K. Hazarika, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.N. Sarma, J.—This appeal is directed against the judgment and order dated 18-9-1967 of the Subordinate Judge, L.A.D. at Tezpur in Misc. L.A. Case No. 59 of 1966 by which he dismissed the application u/s 18 of the Land Acquisition Act, filed by the appellant and affirmed the award of the Collector.

2. The Collector of Darrang, by notification No. RLA.167/64/4 dated 20-6-1964 u/s 4 of the Land Acquisition Act, 1894 (hereinafter called the Act) acquired 131 bighas of land belonging to the appellant, viz. The Kacharigaon Tea Co. Ltd. for construction of a Railway Hospital. By his award dated 30-9-1966 the Collector awarded compensation for 109 bighas of high land @ Rs. 1,700/- per bigha and for 22 bighas of low laying land @ Rs. 700/- per bigha. A sum of Rs. 1,95,619.46 paise was awarded as compensation for the trees, tea bushes and houses standing on the high land and a sum of Rs. 59,447.91 P. was awarded as additional compensation u/s 23(2) of the Act. Total compensation awarded was Rs. 4,56,422.57 P. Out of this amount a sum of Rs. 2,25,617.58 P. was paid in advance on 19-4-1965 at the time of taking advance possession. No interest for the balance amount was given u/s 34 of the Act.

3. Being dissatisfied with the award of the Collector in regard to the compensation awarded for the land, the appellant filed an application u/s 18 of the Act. In this application, the appellant claimed compensation for the land @ Rs. 2,600/- per bigha relying on an award in a previous L.A. case viz. L.A. Case No. 6 of 1961-62 in which 42 bighas of land of the same garden, adjacent to the land of the present case, was acquired and compensation was awarded @ Rs. 2,600/- per bigha. The appellant further claimed interest u/s 34 of the Act. The application u/s 18 of the Act was forwarded by the Collector to the Judge who in his turn transferred the same to the Subordinate Judge for disposal.

4. The appellant examined two witnesses viz. (1) Surjit Singh, who was the Manager of the garden at the relevant time and (2) Rameswar Bhuyan, Head Clerk of the garden. A certified copy of the Award in L.A. Case No. 6 of 1961-62 was filed to prove the rate at which compensation was awarded in that case. The above two witnesses simply proved that the land acquired in the instant case is adjacent to the land acquired in L.A. Case No. 6 of 1961-62 and that the lands are similar. No sale transaction in regard to any neighboring land could be proved by the appellant to show the market price. The Collector did not adduce any evidence. On a consideration of the evidence adduced by the appellant the learned Subordinate Judge found that the land of the present case is not comparable to the land acquired in the previous case and so no reliance could be placed on the Award in the said case for determining the market value of the land at the time of the preliminary notification. He found that compensation was awarded by the Collector after due consideration of all facts and there was no ground to interfere with his award. The question as to whether the appellant was entitled to get interest u/s 34 of the Act was not considered by him at all. In the above view of the case he affirmed the Collector's award and dismissed the application under Sec. 18. Hence the present appeal.

5. Mr. S.R. Khaund, the learned counsel for the appellant submitted before us that the finding of the learned Subordinate Judge that the lands acquired in the instant case are not similar to those of L. A. Case No. 6 of 1961-62 is perverse and against the weight of evidence. According to him it has been amply proved by the evidence on record that 109 bighas of high land are similar and adjacent to the lands acquired in the former L.A. case and there was no justification, whatsoever, for not granting compensation for these 109 bighas of land at the rate of Rs. 2,600/- per bigha as in the previous case. He further submitted that the learned Subordinate Judge committed an error by not allowing interest u/s 34 of the Act on the difference between the amount paid in advance and the amount finally awarded, till the date of payment of the balance.

6. Mr. D.K. Hazarika, the learned counsel appearing for the State, on the other hand, submitted that the award in the previous case is not admissible in evidence and in the absence of any other evidence to prove the market price of the land the learned Subordinate Judge was perfectly justified in dismissing the application u/s 18. In support of his contention that the award In the previous

L.A. case is not admissible, he relied on a Single Bench decision of the Bombay High Court in Special Land Acquisition Officer, Bombay Vs. Lakhamshi Ghelabhai, where his Lordship observed :

A judgment not inter partes in land acquisition reference and relating to land situate near the land in question is not admissible in evidence either as an instance or one from which the market value of the land in question can be inferred or deduced. Such a judgment cannot obviously fall under Sections 40 to 43 or u/s 11 or Sec. 13 of the Evidence Act.

7. The Supreme Court in an unreported decision in Khaja Faijuddin v. State of Hyderabad, (Civil Appeal No. 176 of 1962) disposed of on 10-4-1962 (SC) upheld an award of the City Small Causes Court Hyderabad in a reference u/s 18 of the Act, which was based mainly on three other awards relating to comparable lands and of approximately the same time. In doing so, the court observed-

The said awards afford a comparable data and are the best evidence adduced in the case.

8. In view of this Supreme Court judgment, we are unable to place any reliance on the Bombay case relied on by Mr. Hazarika. It may also be mentioned here that in Shivilal v. Addl. Spl. L.A. Officer, (1968) 9 Guj LR 752 a Division Bench of the Gujarat High Court expressly dissented from the aforesaid Bombay decision in the following words :

Therefore, for the reasons stated above, we are unable to agree with the reasoning of the learned Judge who decided the case reported in 61 BLR 1033 and we are of the view that it would be open to the Court to take into consideration previous awards made by the Land Acquisition Officer in respect of lands situated in the vicinity of the acquired lands.

9. In view of the decision of the Supreme Court, as mentioned above, we have no difficulty to hold that the decision in Special Land Acquisition Officer, Bombay Vs. Lakhamshi Ghelabhai, has not laid down the correct law and that awards in previous L.A. cases for comparable lands and of approximately the same time are good evidence for determination of the market price of land.

10. We now proceed to examine whether the lands acquired in the instant case are comparable to the lands, acquired in L.A. case No. 6 of 1961-62.

11. P.W. 1 Surjit Singh and P.W. 2 Rameswar Bhuyan stated in their evidence that the lands acquired in L.A. case No. 6 and the lands of the present case are contiguous. P.W. 1 stated that the land of the previous case is to the south of the present land. P.W. 2 stated that on the land of the previous L.A. case, there is a Railway colony now. They further stated that there is a Railway station, a High School, a Hospital and a Police Station near the acquired land. P.W. 2 further stated that there is a public road to the west of the acquired land and a similar road by the side of the Railway colony. It is further seen that there were tea bushes, houses and other trees on the 109 bighas of high land acquired in the

instant case and similarly there were tea bushes and other trees on the lands acquired in L.A. case No. 6 of 1961-62. The evidence of P.Ws. 1 and 2 on the above points were not challenged in cross-examination. That apart their evidence is substantially borne out by the description of the land as given in the preliminary notification u/s 4 and the declaration u/s 6 of the Act. In the schedules to these notifications, the southern boundary of the acquired land has been described as the Railway colony and N.L.R. grant No. 425/tha and the western boundary has been described as the P.W.D. Road. There is no dispute that the Railway colony is on the land acquired in the previous L.A. case. Thus the notifications themselves prove that the land of the present case is adjacent to the land of the previous L.A. case. On the face of such evidence we fail to understand how could the learned Sub-Judge state in his judgment that there is no clear evidence on record to show the situation of the land and that there is no P. W. D. road by the side of the acquired land. His judgment is evidently perverse.

12. From the evidence discussed above we have no hesitation to hold that 100 bighas of land of this case are similar to the land acquired in the previous case and (hut both the lands are adjacent. In regard to the other 22 bighas of land, it was conceded by Mr. Khaund that these are not similar to the land of the previous case and that there is no evidence on record to show that the compensation awarded by the Collector for this low living land is inadequate.

13. The previous Land Acquisition case was two years earlier. It is a common knowledge that the price of land, like that of any other article, has been increasing day by day. The appellant's claim for compensation @ Rs. 2,600/- per bigha, on the basis of the earlier award, is rather very moderate in our opinion. We accordingly hold that the appellant is entitled to get compensation for 109 bighas of high land @ Rs. 2,600/- per bigha together with additional compensation at 15 per cent, u/s 23(2) of the Act. So far as other 22 bighas of land is concerned, we, however, find that the compensation awarded by the Collector @ Rupees 700/- per bigha is quite adequate and reasonable.

14. So far as the interest u/s 34 is concerned, as already pointed out, the learned Subordinate Judge did not consider it at all. From the award of the Collector it is seen that he refused to pay any interest on the ground that the appellant gave advance possession over the land, on mutual agreement. Section 34 of the Act provides that where the amount of compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of six percentum per annum from the time of so taking possession until it shall have been so paid or deposited. In the instant case advance possession over the land was taken on 19-4-1965 on payment of a sum of Rupees 2,25,617.58 P. By his award dated 30-9-1966. the Collector awarded a total sum of Rs. 4,56,422.57 P. Under the law the appellant is entitled to get interest on the balance amount of Rupees 2,30,804.00 P. from the date of taking possession till it was paid or deposited. There is no law that such interest is not payable if advance possession is taken

on mutual agreement. There is no evidence that the appellant waived its right to such interest by agreeing to give advance possession.

15. Mr. Khaund the learned counsel for the appellant, further pressed before us for interest u/s 28 of the Act on the excess amount ordered to be paid by this Court. In the circumstances of the case we however reject this prayer.

16. In the result, the order of the learned Subordinate Judge, appealed against is reversed. We hereby order that the Collector will pay compensation to the appellant for 109 bighas of high land @ Rs. 2,600/-per bigha, together with additional compensation @ 15 p. c. u/s 23(2) of the Act. The Collector will also pay interest @ 6 per cent per annum on Rs. 2,30,804.99 P. being the balance of the amount awarded by him after deducting the amount paid as advance. The compensation awarded by the Collector for the remaining 22 bighas of land, is affirmed. The appeal is allowed as indicated above. In the circumstances of the case, we leave the parties to bear their own costs.

Pathak, J.

17. I agree.