

**(2010) 09 PAT CK 0169**

**In the Patna High Court**

**Case No :** First Appeal Nos. 202, 203, 204, 205, 206, 207, 208 and 243 of 1996

The State of Bihar and Another

APPELLANT

Vs

Shri Surendra Prasad Varma and Another <BR> The Union  
of India (UOI) Vs The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 03-09-2010

**Acts Referred:**

**Citation :** (2010) 09 PAT CK 0169

**Final Decision :** Allowed

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**Judgement**

Mungeshwar Sahoo, J.—First Appeal Nos. 202 of 1996 to 208 of 1996 have been filed by the Union of India through the General Manager, North Eastern Railway, Gorakhpur against the judgment and award dated 25.9.1995 passed in Land Acquisition Reference Case Nos. 3 of 1994, 4 of 1994, 5 of 1994, 6 of 1994, 7 of 1994, 8 of 1994 and 9 of 1994 by Sri Sarweshwar Nath, Special Land Acquisition Judge, Bagaha, West Champaran. Whereas State of Bihar has filed First Appeal No. 243 of 1996 against the same judgment and award dated 25.9.1995 passed in Land Acquisition Reference Case No. 6 of 1994.

2. It may be mentioned here that total land measuring 18.39 acres were acquired by the State of Bihar for the purpose of Union of India for construction of Chhitauni Bagaha Rail-cum-Bridge. The notification was issued being notification No. 692 dated 10.6.1992. Regarding the said acquisition seven awards were prepared by the Land Acquisition Officer. Being dissatisfied with the award of the Land Acquisition Officer the land owners filed application for referring the matter u/s 18 of the Land Acquisition Act. The matters were referred to the Land Acquisition Judge and the cases were numbered as Land Acquisition Case Nos. 3 of 1994, 4 of 1994, 5 of 1994, 6 of 1994, 7 of 1994, 8 of 1994 and 9 of 1994. In all those L.A. cases the Union of India for whom the lands were acquired was not made party. The Land Acquisition Judge enhanced the compensation and, therefore, with the leave of this Court the Union of India has filed the aforesaid seven appeals. First Appeal No. 202 of 1996 arises out of

L.A. Case No. 5 of 1994. First Appeal No. 203 of 1996 arises out of L.A. Case No. 4 of 1994. First Appeal No. 204 of 1996 arises out of L.A. Case No. 8 of 1994. First Appeal No. 205 of 1996 arises out of L.A. Case No. 9 of 1994. First Appeal No. 206 of 1996 arises out of L.A. Case No. 6 of 1994. First Appeal No. 207 of 1996 arises out of L.A. Case No. 3 of 1994. First Appeal No. 208 of 1996 arises out of L.A. Case No. 7 of 1994. The State of Bihar filed seven separate appeals. It appears that the other appeals have been dismissed for default. One first appeal i.e. First Appeal No. 243 of 1996 has been filed against the L.A. Case No. 6 of 1994 which is being heard along with the First Appeals filed by the Union of India.

3. It may also be mentioned here that in all the land acquisition cases same type of evidence has been adduced by the land owners and the State of Bihar. The judgment and award is also of same date. Only the area of land acquired defers and, therefore, the compensation also defers. It is therefore, necessary first to summarize the said facts.

A. In Land Acquisition Case No. 3 of 1994 giving rise to First Appeal 207 of 1996, the area of land acquired is 1.83 acres. The Land Acquisition Officer awarded Rs. 39,984.89 paise as compensation whereas the Land Acquisition Judge enhanced the said compensation to Rs. 1,64,74,110.18 paise i.e. the Land Acquisition Judge enhanced the excess compensation of Rs. 1,64,34,125.29 paise.

B. In Land Acquisition Case No. 4 of 1994 giving rise to First Appeal No. 203 of 1996 area of land acquired is 8.38 acres. The Land Acquisition Officer awarded Rs. 2,25,564.12 paise. The Land Acquisition Judge enhanced the compensation to Rs. 7,54,38,821.40 paise. The excess amount enhanced is Rs. 7,52,13,257.28 paise.

C. In Land Acquisition Case No. 5 of 1994 (F.A. No. 202 of 1996) area of land acquired is 1.10 acres. The Land Acquisition Officer awarded Rs. 18,74,423.34 paise which was enhanced by Land Acquisition Judge to Rs. 99,04,590.00 paise, i.e. the excess amount awarded is Rs. 80,30,166.76 paise.

D. In land acquisition case No. 6 of 1994 (F.A. No. 206 of 1996 and 243 of 1996) the area of land acquired is 2.50 acres. The Land Acquisition Officer awarded Rs. 1,30,598.48 paise which was enhanced is Rs. 2,25,10,615.00 paise by Land Acquisition Judge. The excess amount enhanced to Rs. 2,23,80,016.52 paise. Against this, the first appeal of State of Bihar has been numbered as First Appeal No. 243 of 1996.

E. In Land Acquisition Case No. 7 of 1994 area 2.50 acres land was acquired which gave rise to First Appeal No. 208 of 1996. The Land Acquisition Officer awarded Rs. 57,748.48 paise which was enhanced to Rs. 2,25,10,615.00 paise. The excess amount enhanced is Rs. 2,24,52,866.52 paise.

F. In Land Acquisition Case No. 8 of 1994 the area of land acquired is 0.25 acres which gave rise to First Appeal No. 204 of 1996. The Land Acquisition Officer

awarded Rs. 49,581.84 paise whereas the Land Acquisition Judge enhanced the compensation to Rs. 19,85,717.16 paise.

G. In Land Acquisition Case No. 9 of 1994 the area of land acquired was 1.83 acres which gave rise to First Appeal No. 205 of 1996. The Land Acquisition Officer awarded Rs. 55,620.01 paise. The Land Acquisition Judge enhance the compensation to Rs. 1,52,63,473.68 paise. The excess compensation awarded is Rs. 1,52,07,853.67 paise.

Therefore, for total 18.39 acres land the Land Acquisition Officer awarded Rs. 24,33,521.16 paise, whereas the Land Acquisition Judge enhanced the same to Rs. 16,41,37,524.26 paise. It may be mentioned here that the compensation awarded by the Land Acquisition Officer has already been paid to the claimants. In five reference cases two brothers i.e. Surendra Prasad Varma and Virendra Prasad Varma are the claimants and in two reference cases two Tagore brothers are the claimants. In the first appeal filed by the State of Bihar the Union of India is not a party.

4. Since in all the first appeals by same notification the land have been acquired and all the land acquisition cases were heard analogously, the first appeals are also heard analogously and are being disposed of by this common judgment.

5. According to the claimants the compensation has not been paid at the prevailing rate of market value and, therefore, applications u/s 18 of the Land Acquisition Act were filed. According to them the value of the land was not properly considered. The potentialities of the land for capitalization on the basis of 100 years produce should have been given by the State of Bihar. The claimants further stated that the lands of the applicants were situated in 15 places where cane and cane-fruits were grown. There were several herbal plants and, therefore, they claimed that the yearly income of Rs. 1,00,000/- be capitalized by multiplying the same by 100.

6. In First Appeal No. 202 of 1996, it appears that the claimants adduced 8 witnesses. AW 1 has stated that the lands were not fit for cultivation and there were cane and cane-fruits, marcut, munj trees were present. However, in the cross-examination he has not been able to say the number of trees and the size of trees. AW 3 has stated that 5000 to 10000 bundles of cane are produced in one acre and about 25 to 50 cane-fruits were there in one bundle cane. AW 4 and AW 5 have stated that they purchased the forest produce and Jaributi from the claimants for Rs. 80 to 85 thousand and 1,00,000/- per year. Likewise AW 6 has stated that he purchased various produce from the applicants for last 10 to 11 years for Rs. 40 to 45 thousand per year. AW 7 has stated that there were Karma, Jamun, Khait, cane and cane-fruits in the acquired land. About 15 to 20 thousand trees were present in the acquired land.

7. AW 8 is Surendra Prasad Varma who is one of the claimants and practicing advocate. He has stated that he was getting Rs. 3,00,000/- annual income from the trees standing on the acquired land and Rs. 50,000/- per year from the Munj

trees. He has also stated that about 5000 bundles cane were produced in each year and according to him there is no life limit of cane. Therefore, he claimed compensation on the basis of 100 years purchase value.

8. Except these oral evidences the claimants have not adduced any documentary evidence in support of their claim for valuation. The witnesses who have stated that they purchased various produce and Jaributi have also not produced any chit of paper to show that they have actually purchased the forest produce and they have got licence for the same. The documents produced are, Ext. 1 is notice. Ext. 2 is list of produce. Ext. 3 to 3-A are letters issued from the Bihar State Forest Development Corporation Limited to the Land Acquisition Department. Ext. 4 is the Photostat copy of letter issued by Revenue Land Reforms Department to Additional Collector and Ext. 4-A is the Photostat copy of the opinion of Advocate General.

9. Although the State of Bihar has not filed any written statement but it appears that three witnesses have been examined on behalf of the State. OW 1 is the Land Acquisition Officer himself. He has proved the enquiry report which has been marked as Ext. A. He has also stated that the correct valuation has been fixed and compensation had been paid. OW 2 is Amin, who has stated that he has correctly measured the acquired land. He has stated that he has found some lands were agricultural lands. Some portion of acquired land was forest land and some land was barren land i.e. with land and some was parti land. OW 3 is also an Amin in Land Acquisition Department who has proved the sale chart which has been marked as Ext. B. In the same line, in other land acquisition cases, the claimants adduced evidence.

10. From the perusal of the impugned judgment, it appears that on the basis of these evidences the learned Land Acquisition Judge at paragraph 9 held that "I perused the entire facts and evidences adduced on behalf of the both the parties and find that the Land Acquisition Officer and the other staff of the Land Acquisition Department assessed the number of trees arbitrarily without verifying the land and also wrongly assessed the bundles of cane and cane-fruits 808 in Land Acquisition Case No. 5 of 1994". The evidences adduced on behalf of the applicants is that there are 5000 bundles cane and cane-fruits per acres and there were so many trees and Jari buti but the learned Land Acquisition Judge disbelieved the case of the claimants. However, at paragraph 10 the learned Judge observed that "As discussed above Government finds 808 bundle of cane per acre is not correct. The applicants claimed 5000 bundles of cane which is also not correct. In the ends of justice 1500 bundles per acres fixed in place of 808. The applicants are entitled to compensation of 1500 bundles cane per acre in place of 808 bundles. I have already stated above that the Land Acquisition Officer has arbitrarily fixed the rate of guchcha of cane-fruit. The claim of the applicants is Rs. 2/- per guchcha is not correct. In the interest of justice in place of 8 anas, Rs. 1/- per guchcha is fixed. Therefore, the applicants are entitled to the rate of Rs. 1 per guchcha in place of 8 anas."

11. From the above facts, it appears that number of bundles of cane was increased from 808 per acres to 1500 bundles per acres and Rs. 0.50 paise was increased to Rs. 1/- per guchcha of cane-fruits. The Land Acquisition Officer capitalized the yields of trees by multiplying it by 10 whereas the Land Acquisition Judge relying upon the opinion of the Advocate General capitalized by multiplying it by 20. This difference increased the total compensation to crores of rupees. It further appears that although there were agricultural land measuring 8.49 acres but no separate valuation has been fixed by the Land Acquisition Judge. 6.05 acres were barran land but no separate valuation has been fixed. 3.85 acres was orchard but no separate valuation has been fixed.

12. The learned Counsel appearing on behalf of the Union of India as well as State of Bihar submitted that the burden of proof of market value prevailing as on the date of notification was on the claimants but no reliable evidence has been adduced by the claimants in this case and the learned Land Acquisition Judge has disbelieved the claim of the claimants to the effect that there were 5000 bundles of cane per acres but in the ends of justice the Land Acquisition Judge fixed the bundles of cane to 1500 per acres. The learned Counsel further submitted that where from this figure was obtained is not clear. In the ends of justice the Land Acquisition Judge has got no jurisdiction to fix particular bundle of cane per acres arbitrarily without any basis. The learned Counsel further submitted that subsequently the Land Acquisition Judge himself found that the compensation awarded by him is abnormal and excessive so he suo motu reviewed the judgment and thereby reduced the total valuation to Rs. 1,00,000,00/- and odd. The said review order was set aside by this Court in Civil Revision Nos. 1267 of 1996, 1271 of 1996, 1272 of 1996, 1273 of 1996, 1263 of 1996 and 1265 of 1996 on the ground that the learned Land Acquisition Judge has no jurisdiction to review suo motu the judgment. On the basis of this, the learned Counsel for the Appellant submitted that the learned Land Acquisition Judge himself admitted the fact that he committed a mistake and, therefore, reviewed the judgment. The learned Counsel for the Union of India further submitted that the learned Land Acquisition Judge has not fixed separate valuation for barran land, forest land and agricultural land. The learned Counsel further submitted that the Appellant was interested person but no notice was issued and, therefore, the Appellant was prevented from adducing evidence so the cases may be remanded back for giving opportunity to the Appellant to adduce evidence. On these grounds the learned Counsel submitted that the impugned judgment, order and award are liable to be set aside.

13. The learned Counsel appearing for the State of Bihar submitted that the learned Land Acquisition Judge has not followed the well settled principles of law while fixing the compensation. The learned Counsel submitted that for 18 acres of land which includes agricultural land, barran land, parity land, forest land while fixing the market value no distinction has been made. The learned Counsel further submitted that according to the Hon"ble Supreme Court the maximum multiplier should have been used is 10 which was applied by the Land Acquisition

Officer but the Land Acquisition Judge enhanced it by multiplying 20 times. The learned Counsel further submitted that there were no reliable evidence adduced on behalf of the claimants regarding the price of cane-fruit per guchcha and regarding the bundles of cane per acres but on the ground of interest of justice the same have been increased by double by the Land Acquisition Judge. On these grounds it is submitted that the impugned judgment and award are liable to be set aside. On the other hand, the learned Counsel appearing on behalf of claimants Respondents submitted that there is no illegality in the impugned judgment and award and considering the opinion of the Advocate General the Land Acquisition Judge has rightly capitalized by multiplying 20 times. The learned Counsel further submitted that the Hon''ble Supreme Court has also held that in the facts and circumstances of each case the capitalization can also be made by multiplying 20 times.

14. In view of the contentions of the learned Counsels for the parties, the points arises for consideration in these appeals are -

(i) Whether the compensation awarded by the Land Acquisition Officer is correct and just compensation ?

(ii) Whether the compensation enhanced by the Land Acquisition Judge by the impugned judgment and award are sustainable in the eye of law or not ?

15. I have seen and discussed the evidences adduced on behalf of the parties. It appears that in most of the first appeals two brothers are the claimants and in two first appeals other persons are claimants such as in first appeal Nos. 204 of 1996 and 205 of 1996 the claimants are Dilip Tagore and Krishna Tagore. As discussed above, regarding the bundles of cane and the number of various trees and price of cane-fruits are concerned no documentary evidence has been produced. It is admitted fact that the cane matures in two years and there is no regular market for the sale of cane and cane-fruits. Generally it is auction sold. Likewise except the oral statements of the witnesses there are no documentary evidences about the number of Pipal tree, Jaributi, Sisam trees and Munj trees. As stated above, the learned Land Acquisition Judge has also not relied upon the evidences of the witnesses. The learned Land Acquisition Judge has discarded the award of the Land Acquisition Officer only on the ground that it is arbitrary. How this finding has been given is not clear because the evidence of the claimants have been disbelieved.

16. In the case of Ahmedabad Municipal Corpn., etc. etc. Vs. Shardaben and others, etc. etc., the Hon''ble Supreme Court has held that the burden is on the claimants to prove by adducing reliable evidence that the compensation offered by the Land Acquisition Officer is inadequate and the lands are capable of fetching higher market value. It is the duty of the Court to closely scrutinize the evidence, apply the test of prudent and willing purchaser i.e. whether he would be willing to purchase in open and normal market conditions of the acquired lands and then determine just and adequate compensation.

As stated above in the present case this burden has not been discharged by the claimants.

17. In the case of State of Uttar Pradesh etc. Vs. Smt. Ram Kumari Devi etc., the Hon''ble Supreme court has held at paragraph 4 as follows:

4. It is seen that small pieces of land of an extent of 60'' x 20'', 40'' x 40'' and 1600 sq. ft. were sold by the claimants, obviously on coming to know of the proposed acquisition. It is common knowledge that acquisition proposal would be made at an earlier point of time and finalisation of acquisition would take a long time. In the process, on becoming aware of the acquisition, obviously, these sale deeds have been brought into existence to inflate the market value. It is laid down by this Court which is a well-settled principle that it is the duty of the court to assess reasonable compensation. Burden is on the owner to prove the prevailing market value. On adduction of evidence by the parties, the acid test which the court has to adopt is that the court has to sit in the armchair of a prudent purchaser, eschew feats of imagination and consider whether a reasonable prudent purchaser in the open market would offer the same price which the court is intending to fix the market value in respect of the acquired land. Since it is a compulsory acquisition, it is but the solemn duty of the court to assess reasonable compensation so as to allow the same to the owner of the land whose property has been acquired by compulsory acquisition and also to avoid needless burden on public exchequer. No feats of imagination would require to bog the mind that when 13.75 acres of land was offered for sale in an open market, no prudent man would have credulity to purchase that land on square foot basis. The High Court as well as the District Judge have committed a grave error in not applying the above acid test while considering the case. They merely proceeded by accepting the sale deeds which were obviously brought into existence to inflate the market value and determined the compensation on the price settled by them. Thus, we hold that both the courts have applied a wrong principle of law in determining the compensation.

18. In Hookiyar Singh etc.etc. Vs. Special Land Acquisition Officer, Moradabad and another, the Hon''ble Supreme Court has held that it is settled law that the burden of proof of market value prevailing as on the date of publication of notification u/s 4(1) of the L.A. Act is always on the claimants. The Hon''ble Supreme Court has also held that though the Apathy and Blatant lapse on the part of the acquiring officer to adduce evidence and also improper or ineffective or lack of interest on the part of counsel for the State to examine the witnesses, on material facts it is the duty of the court to carefully scrutinize the evidence and determine just and adequate compensation. All these decisions of the Hon''ble Supreme Court clearly speaks that it is the burden of the claimants to satisfy the Court that the compensation awarded by the Land Acquisition Officer is inadequate. In the present case, it appears that the learned court below has without assigning any reason although disbelieved the case of the claimants suo motu enhanced the number of bundles from 808 to 1500 per acres without any

basis.

19. So far capitalization is concerned in State of Haryana Vs. Gurcharan Singh and another etc., the Hon"ble Supreme Court has held that under no circumstances, the multiplier should be more than 8 years multiplier. When the market value is determined on the basis of the yield from trees or plantation 8 years multiplier shall be appropriate multiplier. For agricultural land 12 years multiplier shall be suitable multiplier. In the said decision at paragraph 4 it has been held as follows:

4. In this case, the Collector applied more than 8 years multiplier and awarded compensation. The High Court also has not adverted to this aspect of the Matter. The High Court committed error of law in further enhancing the compensation. Considered from this perspective, since we cannot interfere with the award of the Collector, though the Collector had committed palpable error of law in separately awarding the compensation to the land as well as fruit being trees, it is an offer which cannot be disturbed because of S. 25 of the Acts. The rate of compensation should have been less than what the Collector has awarded, we cannot reduce the amount less than the amount offered by the Collector, yet we have to hold that the Collector, Civil Court and the High Court should have applied 8 years multiplier and determined the compensation. They awarded much more than what the claimant would justly and fairly be entitled to. Therefore, further enhancement of 60% by the High Court on the basis of the Price Index is clearly illegal.

20. Same view has been taken in case of Assistant Commissioner-cum-Land Acquisition Officer, Bellary Vs. Sri S.T. Pompanna Setty, The Hon"ble Supreme Court in that case held that normally in cases where compensation is awarded on yield basis multiplier of 10 is considered, proper and appropriate. Similar view has been taken in Navanath and Others Vs. State of Maharashtra, At paragraph 40 the Hon"ble Supreme Court has held as follows:

40. Indisputably, valuation of agricultural land on the one hand and valuation of orchard and forest on the other would stand on different footings. Whereas in the former case, the known legal principles, particularly with reference to the exemplars will have to be applied, in the latter a different principle, namely, multiplier of eight or ten, as the case may be, on the basis of the multiplicand, namely, yield from the trees or plantation would be applicable. (See Kerala SEB v. Livisha where multiplier of eight was used and Asstt. Commr.-cum-Land Acquisition Officer v. S.T. Pompanna Setty where multiplier of ten was used.) In some decisions of this Court even higher multiplier was used.

21. In view of the above settled principles of law the Land Acquisition Judge could not have used multiplier of 20 particularly, when the Land Acquisition Officer has admittedly used the multiplier of 10. From perusal of the reviewing order of the learned Land Acquisition Judge, it appears that the subsequently he reviewed by applying multiplier of 10. However, as stated above the same has

been set aside in civil revision.

22. In this case total 18.39 acres of land was acquired and according to the claimants it is situated at 15 places there are agricultural land, forest land, with land, parti land. Admittedly the Land Acquisition Officer awarded compensation considering the nature of land and multiplying the yearly income by 10. The Land Acquisition Judge awarded same rate for all the lands. In my opinion the basis for working out market value cannot be same for every portion of the lands which are of different nature. The Land Acquisition Officer awarded Rs. 24,33,521.16 paise for the total land. By no stretch of imagination it can be said to be inadequate compensation considering the nature of land. No interested buyer would be willing to pay even the said amount if it is sold in open market at the time of issue of notification u/s 4. The Court is duty bound to ensure that compensation determined is just and fair for not only the land looser but also for the public who has to pay for the lands acquired. There is no evidence to show that the lands acquired are capable of fetching higher market value. Only oral evidences as discussed above are available that too has been disbelieved by the Land Acquisition Judge. Without finding that the lands are capable of fetching higher market value or that the compensation awarded by Land Acquisition Officer is inadequate the Land Acquisition Judge has increased the compensation to Rs. 16,41,37,524.26 paise i.e. near about one crore thirteen lakhs and odd per acre. Admittedly, the lands are acquired either for construction of railway bridge and/or for forestation. As claimed by claimants themselves the lands are forest land. In such circumstances no prudent willing purchaser will pay the price fixed if it is sold in open market on the date of notification. It appears that the compensation fixed by the Land Acquisition Officer itself is excessive but as has been held by the Hon"ble Supreme Court in the case of State of Harayana v. Gurcharan Singh (Supra) this Court can not reduce the same as it is officer by State. The claimants have failed to prove by adducing reliable evidence that the compensation awarded by Land Acquisition Officer is inadequate and that the lands are capable of fetching more value. They failed to discharge their burden. It therefore find that the compensation awarded by Land Acquisition Officer is just and proper compensation.

23. It appears that in Union of India (UOI) Vs. Sher Singh and Others, the Hon"ble Supreme Court has held that Union of India is a person interested and in that case the Union of India was added as party-Respondent and the appeals filed by the Union of India was held maintainable. In my opinion, now no purpose will be served by remanding the cases to the court below because I have held that the compensation awarded Land Acquisition Officer is just and proper. As discussed above the impugned judgment and award suffers from vaxious illegalities it is liable to be set aside.

24. In view of my above discussions, I, therefore, find that the claimants have failed to prove that the compensation awarded by the Land Acquisition Officer is inadequate by adducing cogent and reliable evidence and the Land Acquisition

Judge has enhanced the compensation on mere surmises and conjectures without following the well settled principles of law as laid down by the Apex court and, therefore, it is unsustainable in the eye of law. In the facts and circumstances of the case, I find that the award prepared by the Land Acquisition Officer is also appears to be excessive because as has been held by the Hon''ble Supreme Court in the present case the multiplier should have been 8 but since the award prepared by the Land Acquisition Officer is an offer to the claimants, this Court has no jurisdiction to reduce the same. I therefore, find that it is just and proper compensation which should not have been enhanced by the Land Acquisition Judge.

25. In view of my above findings, all these 8 First Appeals are allowed. The impugned judgment and award of the Land Acquisition Judge in all the land acquisition cases referred to above are hereby set aside and the award of the Land Acquisition Officer are hereby restored.

26. In the facts and circumstances of the case, the parties shall bear their own costs.