
(1963) 11 OHC CK 0009
In the Orissa High Court
Case No : Misc. Appeal No. 65 of 1961

The State of Orissa

APPELLANT

Vs

Baishnab Sahu and Others

RESPONDENT

Date of Decision : 11-11-1963

Acts Referred:

Central Provinces Tenancy Act, 1898 — Section 46
Land Acquisition Act, 1894 — Section 23, 23(1)
Orissa Development of Industries, Irrigation, Agriculture, Capital Construction and
Resettlement of Displaced Persons (Land Acquisitions) Act, 1948 — Section 7(1)

Citation : AIR 1964 Ori 222

Hon'ble Judges : R.L. Narasimham, C.J; R.K. Das, J

Bench : Division Bench

Advocate : B.P. Das and B.K. Behuria, for the Appellant; R.N. Misra and S.C. Mohapatra, for the Respondent

Judgement

Narasimham, C.J.—This is an appeal from the award given by the Arbitrator, Hirakud Land Organisation, fixing the amount of compensation payable to the respondents for the acquisition of their lands in village Lapang now submerged in the artificial lake formed by the construction of the Hirakud Dam across the river Mahanadi. The total extent of the lands acquired is 13.39 acres. The lands consisted of (1) Bahal or first class paddy-lands 9.07 acres : (2) Berna or second class paddy-lands - 2.52 acres, and (3) Mal or 3rd class paddy-lands -- 1.80 , acres.

2. The lands were acquired under the provisions of Orissa Act XVIII of 1948. Section 7 (1)(e) of that Act says that in fixing the amount of compensation payable, to dispossessed owners, the Arbitrator shall have regard of the provisions of Sub-section (1) of Section 23 of the Land Acquisition Act while estimating the" market value. But the second proviso to Clause (e) of Sub-section (1) of Section 7 of the Act says that where tender any law or custom the lands acquired are not saleable the market value of such lands shall be such multiples as may be prescribed of the deduced rent to be calculated in the

prescribed manner, with an addition of 50 per cent.

The" disputed lands were admittedly ryoti lands in Sambaipur district which are governed by the provisions of the Central Provinces Tenancy Act of 1898 as modified from time to time. Under old Section 46 of that Act there were restrictions on the sale of lands of an occupancy tenant and in estimating the market value of such lands the rules framed by the Government of Orissa from time to time under Orissa Act XVIII of 1948, in exercise of the powers conferred by the 2nd proviso to Clause (e) of Sub-section (1) of Section 7 of that Act would undoubtedly have prevailed. But in 1953 the Orissa Legislature amended Section 46 of the Central Provinces Tenancy Act by an amending Act (Orissa Act XIII of 1953).

In consequence of this amendment an occupancy tenant was given complete freedom to transfer his holding or a portion of it to a bona fide agriculturist but if he is a member of a schedule tribe he could not transfer it to a person who is not a member of a schedule Tribe except with the previous permission of the Deputy Commissioner. This restriction has no application here because admittedly the respondents are not members of a scheduled tribe. Thus, in consequence of this amendment of 1953 they had complete freedom to transfer lands to a bona fide agriculturist. The Arbitrator, therefore held that the lands ceased to be non-saleable lands, and that consequently the rules prescribed for estimating the amount of compensation, payable for non-saleable lands would not apply.

He then called upon both parties to give their estimate of the net income from the lands and he fixed the compensation payable at 16 times the net annual income and then added 15 per cent by way of solatium for the compulsory nature of the acquisition. He thus estimated the total compensation payable at Rs. 25783.02 nP. though the respondents had claimed only Rs. 34815. 40 nP.

3. The learned Advocate General challenged the order of the Arbitrator on the following grounds:

(i) In view of the restriction on the transfer of lands to non-agriculturists the lands should not have been held to be freely saleable, and consequently the Arbitrator should not have estimated the compensation by capitalising the net annual income at 16 times.

(ii) The arbitrator assumed that the cost of cultivation would be only one half of the gross produce. This assumption was not justified in view of the steep increase in the rates of wages paid to agricultural labourers, and in other, expenses incurred in raising crops.

(iii) The Arbitrator was wrong in adding a solatium of 15 percent on account of the compulsory nature of the acquisition.

(iv) In any case the Arbitrator should not have awarded more compensation than what was claimed by the respondents themselves.

4. By virtue of Orissa Act XIII of 1953 the only restriction on the right of transfer, imposed on an occupancy tenant who is not a member of a schedule tribe is the prohibition of transfer to a non-agriculturist. For all practical purposes this restriction may be ignored. In the Hamid Settlement Report (relating to Sambalpur district) it was stated (at page 20) that the census of 1921 showed that out of a population of 7,89,466 the number supported by agriculture was about 6,08,916.

Thus when 80 per cent of people of the district are agriculturists and as amongst agriculturists there is complete freedom of transfer it must be held that for all practical purposes the lands are freely saleable and the principle applicable for estimating compensation in respect of lands which are not saleable cannot apply in the instant case. Though the learned Advocate General accepted this position, he was unable to give any alternative formula for estimating the amount of compensation payable for lands of this type, where there are restrictions on transfers to non-agriculturists.

5. Hence, once it is held that the 2nd proviso to Clause (e) of Sub-section (1) of Section 7 of Orissa Act XVIII of 1948 has no application the arbitrator has no option, but to call upon the parties to estimate the value bearing in mind the principles laid down in Section 23(1) of the Land Acquisition Act. It is well known that there are two methods of valuation, one based on the price of similar lands in the vicinity where there have been recent sales and the other based on a number of years' purchase of the actual or immediately prospective profits of the land acquired. Both parties proved certain sale deeds of other lands in the village but these showed so much variation in the sale value per acre that the Arbitrator was justified in rejecting the same and in proceeding to ascertain the market value by first estimating the net annual income and then capitalising it at 16 times by following the second method.

In the Taxation Enquiry Commission Report (as quoted at page 497 -- "The law of Land Acquisition and Compensation" by V. G. Ramachandra, Second Edition, (1962) the annual value was estimated as "the gross produce less the cost of production including the value of labour actually expended by the farmer and his family and the return for enterprise". This method is very appropriate in the present case. The lands being agricultural lands, a willing buyer would first estimate the net income from the lands and then offer the price on the basis of the capitalised value of that income arrived at by a certain number of years' purchase of that income. This to some extent will depend on the current rate of interest, but 6 per cent per annum being the rate usually allowed now-a-days, 16 years' purchase of the annual net income would be a reasonable estimate of the market value. The Advocate-General could not give any other alternative method of estimating the market value.

6. The learned Arbitrator therefore called upon both parties to give their figures of the gross and net income from the lands. He then proceeded to make an estimate on the assumption that the cost of cultivation would amount to one half

of the gross produce. The learned Advocate-General however, contended that this estimate of the cost of cultivation was too low and that nowadays the cost of cultivation was more than 50 per cent of the gross produce.

In Hamid Settlement Report (page 24), the cost of cultivation was estimated at about one-third of the gross produce. It is true that this Settlement took place in 1924 and that the cost of labour and other expenses of cultivation have definitely gone up since then, but it should be remembered at the same time that the price of agricultural produce has also gone up, and though the increase in the price of foodgrains may not be proportionate to the increase in the cost of labour etc. the percentage of the cost of cultivation to the total income as estimated in Hamid Settlement Report will have to be increased. But as neither party adduced any satisfactory data on the subject the Arbitrator estimated the cost of cultivation at 50 per cent of the gross produce.

I notice in Daiziel's Settlement Report (1922-32) that the cost of cultivation in the coastal districts of Orissa. (Cuttack, Puri and Balasore) was estimated at about 40 per cent of the gross produce.

7. The learned Advocate-General contended that u/s 3 of the Orissa Tenants' Relief Act 1955, a bhag-chasi was not bound to pay more than one fourth of the gross produce to the landlord and that it should therefore be assumed that the actual expenses of cultivation would be 75 per cent of the gross produce. The obvious answer to this argument is that it was not alleged that any portion of the lands acquired was in the possession of Bhagchasis. Moreover, it is fallacious to assume that when the Legislature provided in Orissa Tenants Relief Act that Bhagchasis should be entitled to three-fourths of the gross produce, it assumed that the entire share of the Bhagchasis was meant only to cover the cost of cultivation.

There is no justification for such an assumption. On the other hand, as contended by Mr. Misra, for the other side, the more reasonable view is that the Legislature wanted to give the bhagchasis not only the actual cost of cultivation but something more, by way of return for the labour put in by them in cultivating the lands. Hence it will not be proper to seek the aid of the Orissa Tenants Relief Act for estimating the proportion of the gross produce of an agricultural land which may be reasonably held to cover the actual cost of cultivation.

8. The learned Advocate General then urged that the case should be remanded to the Arbitrator with a view to give the State Government an opportunity to adduce evidence to show the actual proportion of the cost of cultivation to the total gross produce in respect of the lands acquired. We are however not inclined to grant a remand at this belated stage. The lands were notified for acquisition in 1955 and the proceedings before the Arbitrator were initiated in 1957 i.e. more than six years ago.

Moreover the Arbitrator on 30-1-1961 directed both parties to file their calculations to show the net income from the lands. The Government also filed

their calculation statements and the Arbitrator gave, his award on 24-3-1961. At that time it was open to the Government to ask for a further adjournment to prove the actual cost of cultivation. This was not done, it will mean unnecessary harassment to the respondents if we permit the case to be remanded at this stage.

9. The next question is whether the respondents are entitled to a solatium of 15 per cent in view of the compulsory nature of the acquisition. It is true that in Orissa Act XVIII of 1948 there is no express provision for the payment of such solatium as is provided in the Land Acquisition Act. It may be an arguable point as to whether such solatium can be claimed, as having been included in by the expression "fair amount of compensation" occurring in Section 7(1)(b) of the Orissa Act XVIII of 1948. But any discussion on this point will be academic because we find that Government themselves in their letter No. 6002 RVO dated 22-12-55 agreed to pay an additional compensation of 15 per cent in respect of lands acquired for the purpose of Hirakud Dam project.

It is true that in their subsequent letter No. HLA/ 21-60-1333 RVD dated 29-2-1960 they changed their mind and refused to give this additional fifteen per cent, but this order does not appear to have been given retrospective effect. Here we are concerned with the acquisition that took place in 1955 and when Government in their letter dated 22-12-1955 had definitely made it known that solatium at 15 per cent would be payable in respect of cases referred to the Arbitrator, the respondents can legitimately claim that amount.

10. As regards the last contention of the Advocate General Mr. Misra for the respondents fairly conceded that he would be satisfied if the valuation given by the State Government in their statement filed before the Arbitrator to taken, as the basis for any compensation payable to them. It appears that in the valuation statement filed by Government sixteen times the value, of the net annual Income was calculated at Rs. 21516.05 nP. To this may be added the value of trees at Rs. 33.62 nP. Out of the total sum thus arrived at (viz. Rs. 21549.67 nP.) the Government's share of the income amounting to Rs. 233.60 nP. should be deducted, leaving a balance of Rs. 21316.07 nP. If fifteen per cent is added to this amount by way of solatium the amount of compensation payable will be Rs. 24513.47 nP.

11. The total amount awarded by the Arbitrator is modified accordingly and the compensation payable is fixed at Rs. 24513.47 nP. The respondents will also be entitled to interest at six per cent per annum from the date of taking over possession till the date of payment.

Das, J.

12. I agree.