Land Acquisition Officer Vs. Smt. Hiranmayee Devi and anr.

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SooperKanoon Citation : sooperkanoon.com/528708

Court : Orissa

Decided On : Dec-19-1972

Reported in : AIR1973Ori237

Judge : G.K. Misra, C.J. and ;S.K. Ray, J.

Acts : Land Acquisition Act, 1894

Appeal No. : First Appeal No. 88 of 1967

Appellant : Land Acquisition Officer

Respondent : Smt. Hiranmayee Devi and anr.

Advocate for Def. : S. Mohanti and ;S.P. Mohapatra, Advs.

Advocate for Pet/Ap. : Govt. Adv.

Disposition : Appeal partly allowed

Judgement :

S.K. Ray, J.

1. This appeal by the Land Acquisition Officer, Mayurbhanj, is from the award dated 22-12-1966 of the Subordinate Judge, Baripada, made in a Reference under Section 18 of the Land Acquisition Act for determination of the true compensation payable to the claimant-respondents.

2. The Land Acquisition Officer acquired A. O. 56 decimals out of plot No. 3731, total extent of which is A. 3.31 and A. 1.17 decimals out of plot No. 3955 bearing the total area of A. 3.87, both belonging to the respondents for the construction of an approach road to the bridge over Barabalang river on Baripada Udala Road. The process of acquisition commenced by issuance of notification under Section 4 of the Land Acquisition Act on 12-6-1963. The amount of compensation awarded by the Land Acquisition Officer was Rs. 3726/- for the acquired lands. Subject matter of reference, however, was restricted to A. 1.08 comprising of A. O. 34 decimals out of plot No. 3731 and A. O. 74 decimals out of plot No. 3955.

3. The respondents claimed Rupees 80,500/- as compensation before the Land Acquisition Officer on different heads as follows :

(a)value of land acquired-Rs. 40,000/-(b)loss of value of land rendered useless for the purpose for which it was used

-Rs. 10,000/-(c)value of house and other constructions-Rs. 7,000/-(d)loss due to shifting the place of business-Rs. 3,000/-(e)loss of business-Rs. 10,000/-(f)additional compensation at 15% under S. 23 (2) of the Land Acquisition Act.-Rs. 10,500/-

By a subsequent application before the Sub Judge the claim under Item (c) was enhanced to Rs. 7507.85.

4. The Sub Judge gave an award under the following heads :

(a)value of land-Rs. 30,000/-(b)damage on account of severance as contemplated in clause 'thirdly' of S. 23(1) of the Land Acquisition Act.

-Rs. 3,000/-(c)damage on account of constructions being injuriously affected by acquisition and on account of shifting charges, as envisaged under clauses 'fourthly' and 'fifthly' of S. 23(1) of L. A. Act.-Rs. 4,000/-(d)statutory solatium at 15% and interest.

5. The learned counsel for the appellant challenges the award of the learned Sub Judge on the main ground that the determination of compensation under the

heads (a) to (c) of the preceding paragraph is arbitrary, excessive and is not in accord with the evidence on record.

6. Section 23 of the Land Acquisition Act provides for the matter to be considered in determining the amount of compensation to be awarded for the land acquired. The Sub Judge has awarded compensation under clauses 'firstly', 'thirdly', 'fourthly' and 'fifthly' of Sub-section (1) of Section 23 of the Land Acquisition Act.

The first clause relates to the market value of the land at the date of the publication of the notification under Section 4. As already stated the notification under Section 4(1) was published on 12-6-1963. There are various modes of determining the market value. The method which is generally resorted to in determining value of land (without structures) is to ascertain the same on consideration of instances of sales, which are proximate in time to the date of notification under Section 4(1) of the Land Acquisition Act, in respect of lands which are similarly situate and with similar advantages as the acquired lands. It is only where there are no sales of comparable lands that some other method is to be found, like capitalising the annual income which the owner is expected to get by a number of years purchase and to treat such capitalised value as the market value. In the present case, since evidence has been led of instances of sale proximate in time to 12-6-1963, the general method is to be adopted, as has been rightly done by the Sub Judge. In adopting this method, it has to be borne in mind that 'the market value on the basis of which compensation is payable under Section 23 of the Land Acquisition Act means the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing condition, with all its existing advantages, and its potential possibilities when laid out in its most advantageous manner, excluding any advantages due to the carrying out of the scheme for the purposes for which the property is compulsorily acquired.' (See Ragubans Narain Singh v. Govt of U. P., AIR 1967 SC 465). In other words, market value as ascertained under this method would include any particular potentiality or special adaptability of the acquired land, because a vendor willing to sell his land and a purchaser willing to purchase it take into consideration its existing advantages, its situation and also the circumstance whether any potentiality in respect of such land can be turned to account within a reasonably near, future.

Evidence of four sale transactions had been adduced in this case. They are evidenced by Exts. 3 and 4 dated 22-2-1962, Ex. A dated 23-3-1961 and Ex. B dated 22-2-1962. Evidence has also been adduced of compensation paid in respect of some Jal lands also acquired for the very selfsame Balanga approach road for which the land in question has been acquired, at the rate of Rs. 10,000/- per acre. Oral evidence has been adduced to show proximity of the land acquired with lands which are the subject-matter of the aforesaid instances of sale and of another acquisition proceeding and other similarities in advantages. It also appears that the respondents purchased the land in question in the year 1956 and commenced to manufacture bricks in 1957 and set up a tile factory 4 years thereafter i.e. in 1961. The evidence of P. W. 4 is to the further effect that there was rise in the price index of the land on account of need for the land for construction of houses. It is also disclosed in the testimony of P. W. 6 that the land acquired is subject to annual inundation by flood, and therefore, it was not suitable for building purposes, in its present condition. These transactions took place at a time when a willing purchaser and a willing seller were both conscious of the existing condition of the land and other existing advantages and their potential possibilities, like manufacture of bricks and tiles. The market price under those sale transactions would include the potential value of the land. There is no scope in such cases to evaluate the potentiality apart from the market price. In view of the evidence, the market price of the acquired lands of A. 1.08 decimals would be Rs. 18,800/- as concluded by the Sub-Judge. There was no valid reason to add anything more to it. I would, therefore, reduce the market price for the acquired land to Rupees 18,800/-.

7. The Sub-Judge has awarded compensation of Rs. 3,000/- on account of damages sustained for reason of severance of the acquired land from other land, apparently under clause 'forthly' of Sub-section (1) of Section 23 of the Land Acquisition Act.

The petitioner-respondents acquired A.3 and odd of pal land by purchase in the year 1956. The entire area of this A.3 and odd was a compact whole and out of it

A. 1.73 decimals have been acquired. It appears from Ex. 5, Sketch Map and other evidence on record that the land has been acquired from the middle of the purchased compact block of A.3 and odd leaving two triangular pieces of land on either side of it. These triangular pieces have also no interconnection and are completely detached from each other. The result of the acquisition, therefore, appears to be that the land of the respondents was cut into three pieces. The middle piece was acquired leaving the other two pieces completely separate from each other. The evidence further is that in consequence of this severance these two truncated triangular pieces of land measuring, in aggregate 'A. 0.65 decimals, have lost their utility for any purpose and have become completely useless as income yielding source. If these pieces of land measuring A. 0.65 decimals of land had also been acquired, the owners would have been entitled to an additional amount of Rs. 11,300/- and odd towards the market price. There is, thus, a dead permanent loss of Rs. 11,300/- and odd on account of severance of acquired lands from these two pieces of land and this amount could be claimed as damages on account of severance. Approaching this issue from another aspect the claim on this head could be more. The entire purchased area of 3 acres and odd yielded an annual net income of Rs. 3750/-(Ex. 9) and the net income attributable to the severed area of area of 0.65 would be about Rs. 800/- capitalising this by 18 years purchase the amount will be more than Rs. 10,000/-. But as the respondents have claimed only Rs. 10,000/- on this head the Court cannot grant under Section 25, L. A. Act any compensation exceeding the same. For all these reasons, I would, award a sum of Rs. 10,000/- on this head instead of Rs. 3,000/- awarded by the Sub Judge.

8. A sum of Rs. 4,000/- has been awarded on account of the construction being injuriously affected by the acquisition and on account of shifting charges. This part of the award has obviously been made under clauses 'fourthly' and 'fifthly' of Section 23(I) of the Land Acquisition Act. From Ex. 2, it appears that the value of wooden materials, like wooden lintels, sal wood shutters, sal wood door frames and the like used in the constructions of the manufacturing shed is Rs. 3143/-. These constructions were, however, on the two triangular pieces of severed land. The manufacturing shed has become useless. It is in evidence that the respondents have taken on lease another piece of land from the Government and

have started business of manufacture of bricks and tiles. These wooden materials, as also tiles, bricks and doors, it is admitted by the respondents, can be shifted and used in construction of manufacturing shed on the new lease-hold land and thus these materials are still available for use by the respondents. The claimants would not, therefore, be entitled to the value of the entire structure. The total value of the structure inclusive of the aforesaid materials, as claimed before the Land Acquisition Officer being Rs. 7,000/-, the value of brick structure alone would be about Rs. 3,857/- and giving due allowance for depreciation, at the rate of 5% the value would be reduced to Rs. 3,667/-. About one third of bricks can be salvaged whole and in an usable condition. Thus, in consideration of all the aforesaid circumstances, compensation on this head can be assessed at Rs. 1,200/-.

9. In the result, therefore, the respondents are entitled to Rs. 18,800/- towards the market value of the land and Rs. 10,000/-on account of the damage sustained on account of severance and Rs. 1,200/- towards damage sustained on account of acquisition injuriously affecting the other movable and immovable properties and dismantling and requiring the materials. Thus the aggregate compensation payable is Rs. 30,000/-. The award of the Sub Judge in other respects namely, granting of statutory solatium at 15% under Section 23(1) of the Land Acquisition Act and interest shall stand.

10. The appeal is accordingly partly allowed, but there will be no order for costs of this Court.

G.K. Misra, C.J.

11. I agree.