

**Land Acquisition Zone Officer Vs. Jatri Dehury and anr.**

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**Court :** Orissa

**Decided On :** May-10-2002

**Reported in :** 2002(II)OLR92

**Judge :** A.S. Naidu, J.

**Acts :** Land Acquisition Act

**Appeal No. :** First Appeal No. 153 of 1994

**Appellant :** Land Acquisition Zone Officer

**Respondent :** Jatri Dehury and anr.

**Advocate for Def. :** B.M. Patnaik, Adv.

**Advocate for Pet/Ap. :** S. Das, Addl. Stg. Counsel

**Judgement :**

**A.S. Naidu, J.**

1. What is sought to be challenged in this First Appeal is the amount of compensation awarded by the then Subordinate Judge, Angul in Land Acquisition Misc. Case No. 23 of 1987 on the ground that the learned Court below failed to appreciate the geographical situation of the acquired land vis a-vis the lands involved in First Appeal Nos. 293/88 and 57/ 90, and also acted illegally and with

material irregularity in awarding separate compensation for the trees.

2. By Notification published in the Orissa Gazette No. 1691 dated December 20, 1985, Ac.0.54 decimals of land situated in village Ranigoda Jungle belonging to the claimants was acquired along with some other lands for the purpose of construction of Talcher-Sambalpur Rail Link. The Land Acquisition Officer fixed compensation for the land acquired at the rate of Rs. 20,000.00 per acre for Sarad-II and Bagayat varieties of land and at the rate of Rs. 10,00.00 per acre for Tala variety of land. The compensation awarded was accepted by the claimants, but under protest, and a petition was filed claiming higher rate of compensation-for the land as well as trees. The said petition was referred to the then Subordinate Judge, Angul under Section 18 of the Land Acquisition Act.

3. Before the Court below, to substantiate their claim, the claimants examined the Revenue Inspector, Talcher as P.W. 1. No document was produced either on behalf of the claimants or on behalf of the Land Acquisition Zone Officer. It is pertinent to mention here that on behalf of the latter, even no oral evidence was adduced. The Revenue Inspector who was examined as P.W. 1 categorically stated that the lands situated in the adjoining villages which were also acquired for the same purpose were no way different in quality from the land belonging to the claimants. The Court below relying upon the decisions of this Court in First Appeal No. 293/88 (L.A. Zone Officer v. Anadi Ch. Behera) dated 5.3.1990 and First Appeal No. 57/90 (L.A. Zone Officer v. Uchhaba Naik) dated 1.5.1991 as well as the decision in First Appeal No. 294 of 1988 (L.A. Zone Officer v. Nadhu Dehury and Anr.) dated 8.12.1989, held that the claimants were entitled to receive compensation for their land at the rate of Rs. 30,000.00 per acre for Taila and Bagayat varieties of land and at the rate of Rs. 50,000.00 per acre for Sarada, Jala-I variety of land. The Court below also held that the claimants were entitled to compensation at the rate of Rs. 400.00 for each mango tree. On the basis of such findings, the Court held that the claimants were entitled to higher compensation of Rs. 16,800.00 for their land and Rs. 3,200.00 for the trees, besides the statutory benefits. The said order, as stated earlier, is impugned in this First Appeal.

4. A perusal of the records clearly reveals that the lands involved in the earlier First Appeal (supra) were either situated in the same village where the claimants' land was situated, or in the adjoining villages. The claimants examined the Revenue Inspector, Talcher-Sambalpur, who categorically deposed referring to the Enquiry Register prepared at the time of acquisition that the 'Kissam of the claimants' land was Sarada, Jala-I at the time of acquisition. In cross-examination, the suggestion that the quality of the lands of the nearby villages varied was negated. Thus, the only evidence available on records unambiguously reveals that the quality of the lands involved in the earlier First Appeal (supra) vis-a-vis the land acquired were one and the same. It being the case of the appellant that the quality of the land of the claimants and that of lands involved in the earlier First Appeals were different, onus was upon the appellant to prove the same. Surprisingly, no attempt was made to discharge the said onus, inasmuch as neither any document was produced, nor any oral evidence was adduced. In the absence of any other evidence, the learned Court below rightly relied upon the only evidence adduced on behalf of the claimants, i.e. the oral evidence of P.W.1 who was none else than the Revenue Inspector of the locality, and rightly came to the conclusion that the land belonging to the claimants was of the similar variety and awarded compensation in consonance with the decisions of this Court in the other First Appeals. It is pertinent to mention here that the lands involved in the earlier First Appeals were also acquired under the same Land Acquisition Notification. Thus, I do not find any error and/or material irregularity in the finding arrived at by the learned Court below, so far as the cost of the land is concerned.

5. But then, the Court below has awarded Rs. 3,200.00 towards compensation for the trees separately. Admittedly, there were eight mango trees on the acquired land. On the basis of the findings of this Court in the earlier First Appeals that the value of each tree would be Rs. 400.00, the Court below has awarded Rs. 3,200.00. The Apex Court in the case of State of Haryana v. Gurcharan Singh, reported in AIR 1996 SC 106, has observed that under no circumstances the Court should allow compensation on the basis of the nature of the land as well as the fruit-bearing trees. In other words, the market value of the land is determined twice over, i.e., once on the basis of the value of the land and again on the basis of the yield of the fruit-bearing trees. The definition of the land includes the

benefits that arise from the land, as defined in Section 3-A of the Act. In the said case, the Apex Court directed that the yield of the trees should be determined and thereafter the multiplier principles should be adopted to determine the cost of the land. For the fruit-bearing trees, according to the Apex Court, '8' multiplier would be just and equitable.

6. In the present case, though there is no dispute with regard to existence of eight mango trees on the acquired land, no evidence has been adduced by either side with regard to the yield and/or income derived from the said land by the claimants. On the other hand, the cost of each tree has been assessed at Rs. 400.00. The said principle, according to the Apex Court, is not just and proper.

7. After hearing the learned counsel for the State, Mr. B. M. Patnaik, appearing for the respondents, and after going through the records, I was inclined to remand the case to the Court below, but then the acquisition was of the year 1985 when the possession was taken. Almost more than sixteen years have elapsed in the meanwhile. Remanding the case after such a long time would not be for the benefit of any of the parties.

8. The Court below awarded a compensation of Rs. 16,000.00 towards land and Rs. 3,200.00 towards cost of the trees and I feel even if a conservative view is taken the yield of each fruit-bearing mango tree would be at least Rs. 150.00 to Rs. 200.00 per annum. If the multiplier principle is adopted, the cost of the land would be much more than what has been awarded by the Court below, both towards cost of the land and cost of trees. But then, the claimants have not filed any appeal, nor any cross-objection in this appeal and thus are not entitled to any enhancement of compensation.

9. Taking a cumulative assessment of the facts and circumstances of the case, the evidence adduced in the Court below as well as other materials available on record, I feel, ends of justice and equity would be better served if the award passed by the Court below is modified to the extent that the compensation towards land including the trees would be Rs. 20,000.00, i.e. the same amount awarded by the Court below. It is needless to say that the claimants would also be entitled to solatium at the rate of 30%, additional compensation at the rate of 12% and

interest at the rate of 9% for one year with effect from the date of taking over possession of the land and at the rate of 15% for the rest period till the compensation is paid. The amount already paid towards compensation shall be deducted.

10. With the aforesaid modification, the First Appeal is disposed of. Parties to bear their respective costs.

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