

**Urmila Devi. Vs. State of Bihar.**

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**Court :** Patna

**Decided On :** Oct-07-2010

**Judge :** Mungeshwar Sahoo, J.

**Acts :** Land Acquisition Act - Sections 4, 9, 18

**Appeal No. :** FIRST APPEAL No. 158 OF 1993; FIRST APPEAL No. 159 OF 1993

**Appellant :** Urmila Devi.

**Respondent :** State of Bihar.

**Advocate for Def. :** Ms. G. Nisha, Adv.

**Advocate for Pet/Ap. :** Mr. Rajendra Prasad; Mr. Pramod Kumar; Mr. Ritesh Kumar, Advs.

**Judgement :**

(1)Both the First Appeals have been filed by the respective land owners against the common judgment and award dated 21.01.1993 passed by Sri J.N.Sharma, Land Acquisition Judge, Biharsharif, Nalanda by which the Land Acquisition Case No. 1 of 1992 and 2 of 1992 were disposed of.

(2) It may be mentioned here that First Appeal No. 158 of 1993, arises out of L.A. Case No. 1 of 1992 and First Appeal No. 159 of 1993, arises out of L.A. Case No. 2 of 1992. The State of Bihar, respondent acquired the lands of the appellants of

both the First Appeals for the purpose of 33/11 K.V. Sub Station and construction of staff quarters for the Electricity Department. The notification under Section 4 of the Land Acquisition Act was published in Gazette on 16.1.1991. Notification under Section 9 was issued on 09.10.1991. Total land was 1.4 acre, which has been acquired by the State of Bihar. In First Appeal No. 158 of 1993, arising out of L.A. Case No. 1 of 1992, the land involved is 0.935 acre whereas in First Appeal No. 159 of 1993, arising out of L.A. Case No. 2 of 1992, the land involved is 0.4225 acre. The land owners claimed before the Collector for compensation at the rate of Rs.18,000 to Rs.20,000 per Katha. The Collector awarded total compensation of Rs.60,888.37 in First Appeal No. 158 of 1993 whereas in First Appeal No. 159 of 1993, the Collector awarded Rs.27,440.36 including all statutory benefits. The value of the land was fixed at Rs.1,481.46 per katha. (3) On being dissatisfied with the award of the Land Acquisition Officer, the claimants filed application under Section 18 of the L.A. Act which was referred by the Land Acquisition Officer to the Land Acquisition Judge. The claimants claimed Rs.20,000 per katha for the lands acquired. Before the Land Acquisition Judge, the claimants adduced oral as well as documentary evidences. It may be mentioned here that the State of Bihar did not file any written statement.

(4) The claim of Urmila Devi who is appellant in First Appeal No. 158 of 1993 is that the market value of the land in the vicinity is not less than Rs.7064 to Rs.10,500 per decimal. In the year 1966, the Circle Officer had assessed the price of the land in the vicinity at Rs.20,000 per katha and therefore, the market value of the lands acquired in the year 1991 cannot be less than the said value. The further case is that the lands acquired are adjacent to the municipal area and town is extending towards the said land. Therefore, there is future potentiality of the land. There is sufficient irrigation facility on the acquired land and the appellant was earning Rs.16,000 per acre per annum from the agricultural yield. At the time of taking possession on 16.1.1991, there was a paddy crop on the acquired land which was destroyed. Therefore, in addition to the value of the land Rs.200 per katha was claimed for the crops. The claim of Lakshmi Devi who is appellant of First Appeal No. 159 of 1993 is on the same line.

(5) The appellants adduced oral as well as documentary evidences in the Court below. After trial, the learned Land Acquisition Judge in First Appeal No. 158 of 1993 enhanced total compensation including the statutory benefits to Rs.4,72,000 and odd in addition to award of the Collector. The rate of the land was fixed at Rs.11,000 per katha whereas in First Appeal No. 159 of 1993, the total compensation was fixed at Rs.2,14,215.47. Therefore, the market value of the land which was fixed by the Collector at Rs.1,481.46 was enhanced to Rs.11,000 per katha. (6) The claimants filed these First Appeals claiming enhancement of the compensation on the ground that the Land Acquisition Judge should have fixed the market value of the land acquired at Rs.20,000 per katha and in no case, it should be less than the said amount.

(7) The learned counsel appearing on behalf of the appellants submitted that the learned Court below has not properly assessed the evidence and has wrongly not relied upon the sale deeds which amply proves the market value of the land acquired to be Rs.20,000 per katha. The learned counsel further submitted that admittedly lands acquired are just by the side of main road i.e. Patna-Ranchi Highway and it is in the developed area and moreover, the lands were acquired for the purpose of construction of power-station and for construction of staff's quarters and therefore, the compensation should be enhanced. (8) On the other hand, the learned counsel appearing on behalf of the State-respondent submitted that the compensation awarded by the Land Acquisition Judge is adequate, just and proper and cannot be interfered with in this First Appeal. The learned counsel further submitted that considering everything i.e. the nature of the land, for the purpose of which the lands were acquired and the market value in the vicinity, the learned Land Acquisition Judge has enhanced the value from Rs.1481 and odd per katha to Rs.11,000 per katha and therefore, the total compensation including the statutory benefits have been increased to Rs.4,72,000 and odd in addition to award of Collector for 94 decimals land in First Appeal No. 158 of 1993 whereas compensation in First Appeal No. 159 of 1993 where 42 decimals of land is involved has been enhanced from Rs.27,440 and odd to Rs.2,14,215 in addition to award of Collector. On these grounds, the learned counsel submitted that the First Appeals are liable to be dismissed with cost.

(9) In view of the submission of the parties, the points arises for consideration in this appeal is as to "whether the compensation awarded by the Land Acquisition Judge is just, proper, adequate or not or "whether the appellants are entitled to more compensation?"

(10) P.W. 1 is Suresh Prasad who is husband of Urmila Devi, appellant in First Appeal No. 158 of 1993. He is power of attorney holder of Urmila Devi. He has stated that 94 decimals of land has been acquired by the State of Bihar which is just by the side of Patna-Ranchi road and the said land is fit for construction of houses and shops. He himself has purchased the said land for construction of a glass factory prior to the acquisition. There is police line, petrol pump, hotels etc. in the said area. The award given by the collector is very low. At the time of taking possession, the crops worth Rs.6,000-7,000 was destroyed. He has further stated that he had produced the sale deeds before the Collector and the witness has proved his application under Section

18. P.W. 3 is Brahamdeo Prasad, who is husband of Lakshmi Devi, appellant in First Appeal No. 159 of 1993. He has proved the power of attorney as Exhibit 3. He has stated that 42 1/4 decimals land have been acquired. The said land is by the side of road and at a distance of 50 yard by the side of the said land and houses is there. On one portion of the acquired land, house was there and a tenant was inducted and thereafter he filed eviction suit against him which was decreed. This witness has further stated that at the time of acquisition of the land, the market value of the land was Rs.25,000 to Rs.30,000 per katha. P.W. 4 has proved the sale deeds Exhibit-2 series. P.W. 2 has stated that he has purchased lands in the vicinity. His sale deed has been marked as Exhibit-2 and 2/1. P.W. 6, Misri Lal has stated that the lands acquired are situated near the Ranchi-Patna road and adjacent to this land, he has purchased the land for construction of house. The town is expanding to that side. The certified copy of the sale deed has been marked Exhibit-4.

(11) From perusal of the evidences of the witnesses as discussed above, it appears that the area is developed area. There are buildings, hotels, petrol pump, shops and houses in the locality. Further, the land is situated adjacent to Patna-

Ranchi road and is near to municipality. In my opinion, therefore, it appears that the learned Court below has rightly found that the market value of the land fixed by the Land Acquisition Officer is very low. However, the sale deed, Exhibit-2 series have been produced by the appellants to show the market value of the land. Exhibit-2 is dated 5.12.1990 for Rs.4,950 by which 6 Dhurs land was purchased and likewise, Exhibit 2/1 is dated 7.4.1992 for Rs.16,000 and the land sold is 16 Dhurs. Exhibit-2/2 is dated 5.10.1990 for Rs.21,000 and the land sold was 14 1/2 Dhurs. Exhibit-2/3 is dated 5.10.1990 for Rs.21,000 and the lands sold was 14 1/2 Dhurs. Likewise, Exhibit 2/4 is dated 22.7.1985 for Rs.30,000 and the lands sold was 5 1/2 decimals. From the above sale deeds, it appears that very small area was transferred through the said sale deeds. As stated above, in the present case, near about 1.5 acres of land has been acquired. Therefore, it cannot be said that when the lands acquired was offered for the sell in open market could have fetched the same value. In the case of State of U.P. and others vs. Ram Kumari Devi and ors., the Hon'ble Supreme Court has held that it is common knowledge that acquisition proposal would be made at an earlier point of time and finalization of acquisition would take a long time. In the process on becoming aware of the acquisition, obviously, the sale deeds are brought into existence to inflate the market value. In the sand decision, the Hon'ble Supreme Court further held that it is the duty of the Court to assess reasonable compensation and 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 and also to avoid needless burden on public exchequer.

(12) From perusal of the impugned judgment, it appears that the Land Acquisition Judge has noticed that the area is developed area and the lands are by the side of Ranchi-Patna road and there are constructions and electricity line in the locality. The learned Land Acquisition Judge also noticed the sale deeds, Exhibit-2 series.

(13) Admittedly, the lands have been acquired for the purpose of construction of power house and staff's quarters and therefore, appropriate deduction for development of the land by providing enough space for roads, sewage and drains are to be taken into account. The lands involve in the sale deeds are of very small area and therefore, the price cannot be equated in the present case with the lands acquired. In the case of Ahad brothers vs. State of M.P. and ors reported in 2005, Vol. 1, Supreme Court Cases 545, the Hon'ble Apex Court held that it would be just and proper to deduct 30% towards development charges. In the case of Sharadamma vs. Special Land Acquisition Officer reported in 2007 AIR SCW 1109, the Hon'ble Supreme Court taking note of the fact that the acquired land in that case was surrounded by factories and there was industrial potentialities and the land acquired was adjoining the national highway and better locality fixed the compensation at the rate of Rs.20 per square yard.

(14) In view of the above facts and circumstances, regard being had to the situation of the land and the prevailing market value as would be evident from sale deeds, Exhibit-2 series, I find that the learned Court below has rightly fixed the market value of the lands acquired at Rs.11,000 per katha.

(15) The learned counsel for the appellant submitted that the learned Court below has awarded Rs.100 per katha for damage of the crop. It may be mentioned here that for determination of compensation some guess work is essential. The claimants were claiming Rs.200 per katha and the learned Court below has awarded Rs.100 per katha for damage of the crops. In my opinion, it is just compensation. Now, the total compensation awarded by the Land Acquisition Judge is Rs.4,72,715.69 in addition to the award of the Collector which has already been paid and likewise, in other First Appeal, the total compensation is Rs.2,13,001.33 in addition to the award of the Collector of Rs.27,440.36 already paid to the appellant. In my opinion, this amount enhanced by the Land Acquisition Judge is just, proper and is the prevailing market value of the land acquired. I, therefore, find no reason to interfere with the findings of the learned Court below.

(16) In the result, I find no merit in both the First Appeals and accordingly, both the First Appeals are dismissed. In the facts and circumstances, the parties shall bear

their own costs.

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