Mostt.Prabha Devi. Vs. the State of Bihar.

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Court : Patna

Decided On : Mar-31-2011

Judge : Mungeshwar Sahoo, J.

Acts : Land Acquisition Act - Sections 4. 18

Appeal No. : FIRST APPEAL No. 85 OF 2002

Appellant : Mostt.Prabha Devi.

Respondent : The State of Bihar.

Advocate for Def. : Mr. K.P.Gupta; Mr. Binod Kumar, Advs.

Advocate for Pet/Ap. : Mr. Ashwani Kumar Singh; Mr. Jai Prakash Singh, Advs.

Judgement :

(1) The claimants have filed this First Appeal against the judgment and award dated 22.12.2001 passed by Sub Judge II, Gaya in Land Acquisition Case No.20 of 1993/1 of 1993.

(2) It appears that the lands of the claimants measuring 10 decimals equal to 3 kathas were acquired by the State of Bihar. Notification under Section 4 of the L.A. Act was issued on 01.12.1978. The Land Acquisition Officer awarded compensation of Rs.14,495.

(3) The claimants-appellants filed application under Section 18 of the Land Acquisition Act claiming compensation of Rs.3 lacs at the rate of Rs.1 lakh per katha. According to the claimants, the acquired land is adjacent to Baijnath Mahadev Temple and is also near to Sri Vishnupad Mandir and is therefore, fit for residential purpose and there are buildings in both the sides of acquired land. It has got potential value and, therefore, the value of the land on the date of acquisition is not less than Rs.1 lakh per katha but very low amount of compensation has been awarded. The said application was referred to the Land Acquisition Judge. The State of Bihar claimed that the land was acquired for development of Sri Vishnupad Mandir and the award has been prepared correctly on the basis of sale report. After trial, the learned Court below fixed the value of the land at Rs.425 per decimal and thereby enhanced the compensation of the land fixed by the Land Acquisition Officer. It may be mentioned here that the Land Acquisition Officer fixed the compensation at Rs.320 per decimal.

(4) The learned counsel appearing on behalf of the appellants submitted that the lands acquired was more valuable and because of its situation, its value was not less than Rs.1 lakh per katha on the date of acquisition and further, the same was acquired for the development of Mandir. The learned counsel further submitted that overwhelming evidences were adduced on behalf of the appellants but the learned Court below instead of fixing the rate at Rs.1 lakh per katha has fixed only Rs.425 per decimal. On these grounds, the learned counsel submitted that the First Appeal is liable to be allowed and the appellant's claim be decreed.

(5) On the other hand, the learned counsel appearing on behalf of the respondent submitted that on the basis of the sale report, the learned Court below has rightly determined the rate of the land at Rs.425 per decimal and, therefore, the First Appeal is liable to be dismissed.

(6) In view of the above contentions of the parties, the only point arises for decision in this appeal is as to "whether the compensation fixed by the Land Acquisition Judge is just and proper" or "whether the appellants are entitled for the compensation at the rate of Rs.1 lakh per katha" and "whether the impugned judgment and award are sustainable in the eye of law"?

(7) It appears that 10 witnesses have been examined on behalf of the appellants and 7 witnesses have been examined on behalf of the respondent. Both the parties have also produced documentary evidences. A.W.2 has stated that the value of the lands acquired was Rs.1 lakh per katha in the year 1992-93. It may be mentioned here that the notification under Section 4 of the L.A. Act was issued on 01.12.1978 and according to the evidence of this witness; the value of the land was Rs.1 lakh per katha in the year 1992-93. A.W.3 to A.W.5 is on the point that the acquired land was enclosed by a boundary wall and there are buildings. A.W.6 has stated that in 1988, the value of the land was 1 lakh per katha. A.W.9 is one of the applicants. A.W.10 has stated that about Rs.50,000 was spent on construction of boundary wall. These are the oral evidences regarding the acquired land. Exhibit-1 is registered sale deed dated 19.01.1990. By this sale deed, 35 decimal land of Municipal Plot No.20035 and 20036 of Ward No.8 was sold for Rs.49,000. On calculation, the cost of the land comes to Rs.1400 per decimal in the year 1990. This land is situated in the vicinity of the lands acquired. The learned counsel for the appellants submitted that the said sale deed is of the year 1990 and, therefore, that may not be taken into for consideration. I find no force in the submission of the learned counsel for the appellants because the document was produced by the appellants themselves and the sale deed is of the year 1990. The sale deed clearly indicates the value of the lands in the locality in the year 1990. As stated above the lands within the municipal area in the said Mohalla were sold at Rs.1400 per decimal and the plaintiffs are claiming 1 lakh per katha in the year 1978.

(8) Exhibit-2 is certified copy of the judgment. It appears that Exhibit-2 was passed on the basis of earlier judgment in another Land Acquisition case whereby the market value was fixed at Rs.1000 per decimal. There is no evidence adduced on behalf of the appellants to show that the nature of the lands acquired in those cases is similar to that of this present case. The Land Acquisition Judge has found that the land is situated in different area and, therefore, observed that the said judgment cannot be the basis for fixing market value in the present case.

(9) The witnesses examined on behalf of the State of Bihar have stated that the lands have been acquired for the purpose of development of Sri Vishnupad Mandir

and the award was prepared on the basis of sale report. Exhibit-B is sale report and Exhibit-C is rate report. From Exhibit-B, it appears that on 16.08.1976, some lands of survey plot no.20353, 20354 and 20355 were sold for Rs.320 per decimal. Therefore, it appears that in the year 1976, the value of the lands in the locality was Rs.320 per decimal. The present lands have been acquired in the year 1978. Considering this aspect of the matter, the learned Land Acquisition Judge increased the market value from Rs.320 to Rs.425. Therefore, considering the documentary evidences produced on behalf of the appellants themselves which has been marked Exhibit-1 i.e. sale deed dated 19.01.1990 and Exhibit-B, the sale report, I find that the learned Court below has rightly determined the market value of the lands acquired at Rs.425 per decimal. The plaintiffs have failed to prove the value of the land at Rs.1 lakh per katha in the year 1978. The witnesses examined on behalf of the appellants as discussed above have given the value of the land at Rs.1 lakh in the year 1992-93 or in the year 1988. Therefore, there is no reliable evidence to accept the claim of the appellants.

(10) In view of the above discussion, I find no reason to interfere with the finding of the learned Land Acquisition Judge. Therefore, the finding regarding the valuation fixed by the Land Acquisition Judge is hereby confirmed.

(11) In view of my above findings, I find no merit in this First Appeal and accordingly, this First Appeal is dismissed.