

Sitaram KediA. Vs. the State of Bihar.

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Court : Patna

Decided On : Apr-27-2011

Judge : Mungeshwar Sahoo, J.

Acts : Land Acquisition Act, 1984 - Sections 4(1), 18, 9

Appeal No. : FIRST APPEAL No. 553 OF 1997

Appellant : Sitaram KediA.

Respondent : The State of Bihar.

Advocate for Def. : Mr. J.S. Arora; Mr. Anupa Nand Jha, Adv.

Advocate for Pet/Ap. : Mr. Manoj Kumar Sinha, Adv.

Judgement :

1. The claimant has filed this First Appeal against the Judgment and Award dated 30.07.1997 passed by Sri Ramesh Jha, the learned Land Acquisition Judge, Naugachia, Bhagalpur in L.A. No.3 of 1989 dismissing the said reference petition filed by the appellant.

2. It appears that the land of the claimant-appellant measuring 56 decimals was acquired by the State of Bihar for the purpose of construction of the house of the employees of the Flood Control Department. Notification under Section 4 of the L.A. Act was published on 17.09.1982. The Collector fixed the market value of the acquired land at Rs.8,296.40/- @ Rs.14,815/- per acre. The appellant filed

application under Section 18 of the Land Acquisition Act praying for enhancement of the compensation on the ground that the land of the applicant is situated near college, school, resident colony and also it is close to Naugachia Bazar. The market value of the land prior to acquisition was Rs.20,000/- per kattha. The applicant also claimed Rs.47,000/- for the cost of different trees. The applicant also claimed Rs.13,500/- as cost of well, boring and buildings and Rs.50,000/- as situation value. Total the appellant claimed Rs.3,60,500/-. The said application was referred to the Court for decision.

3. The State of Bihar-respondent filed objection to the said application alleging that the appellant has received the proper compensation.

4. After trial, the learned Court below found that the appellant has not succeeded in proving the claim made by him for more amount of compensation and there is no wrong in the award prepared by the Collector and, therefore, dismissed the application.

5. The learned counsel, Mr. Manoj Kumar Singh, appearing on behalf of the appellant submitted that the learned Court below has not considered the evidence that there was house standing on the land acquired and there were many trees on the said land, the cost of which was Rs.47,000/-. The learned Court below has wrongly rejected the application. There are overwhelming evidence on record which suggest that on the date of acquisition of the land, the value of the land was more than 20,000/- per kattha but the learned Court below wrongly did not rely on those evidence. The acquired land was near the school, college and market. Therefore, the compensation awarded by the Collector is very low. On these grounds, the learned counsel submitted that the impugned Judgment and Award are liable to be set aside and the compensation be enhanced by fixing RS.20,000/- per kattha. The learned counsel also prayed that the value of the trees may also be given separately.

6. On the other hand, Mr. Arora, learned standing counsel No.6 appearing on behalf of the State of Bihar submitted that in this type of claim for compensation, the oral evidence are not material nor the Judgment can be based on the oral evidence and, therefore, the learned Court below has rightly not relied upon the

oral evidence. The appellant had also adduced sale instances which were also considered by the Court below. There is no illegality in the impugned Judgment and Award and moreover the Collector had awarded just and proper compensation to the appellant for the lands acquired. On these grounds, the learned S.C.6 submitted that the appeal is liable to be dismissed with cost.

7. In view of the above contentions of the parties, the points arises for consideration in this Appeal is as to whether the claimant-appellant is entitled for higher compensation as claimed by him or whether the compensation awarded by the Collector is just and proper and whether impugned Judgment and Award are sustainable in the eye of law.

8. The appellant in this case claimed Rs.20,000/- per kattha for the land. The appellant also claimed separate compensation for the value of the trees and the house standing on the acquired land. The appellant claimed these higher compensation alleging that the acquired land was near Naugachia police station, college, S.D.S. School and Professor Colony. The market value of the land was Rs.20,000/- per kattha. In support of his claim, the claimant has adduced the oral evidences as well as documentary evidences. Applicant witness No.1 is the labour of the appellant. He has stated that 56 decimal=13 kattha land of the appellant was acquired by the State of Bihar. The said land is suitable for business. At the time of acquisition of the land, there were trees. This witness has specified the number of trees and variety of trees. He has also stated that there was house and well. The value of the house was about Rs.50,000/- and the value of the land was about Rs.20,000/- to 25,000/- per kattha. However, it appears from cross-examination that this witness is unable to say as to when the land was acquired. How many days earlier, it was acquired, he is unable to say. Therefore, his evidence regarding valuation is not reliable because he is unable to show in which year the lands were acquired. Therefore, the market value stated by this witness relates to which year is not clear. Moreover for determining compensation or the market value of the land acquired, the exaggerated oral statement should not be relied upon. In the present case, it appears that Notification was published on 17.09.1982 and the acquisition proceeding was completed by 22.04.1983. During this long period, no application was filed by the appellant. He filed objection under

Section 9 of the L.A. Act which has been marked Ext.3 on 1st October, 1983 and in that application, these statements have been made that there were houses, trees, well etc.

9. A.W.2 is the claimant himself. A.W.3 is formal witness. These are the oral evidences adduced by the appellant. As stated above on the basis of these oral evidences, the market value on the date of acquisition cannot be determined. The learned counsel for the appellant submitted that there is no contrary evidence adduced by the Opposite party- respondent. So far this submission is concerned, merely because the opposite party has not adduced contrary evidence or that did not produce any document showing market value whatever statement have been made by the applicants-witness cannot be relied upon.

10. In a decision reported in Ahamdabad Municipal Corporation v. Sharda Ben and others 1996 (8) SCC 93, the Hon'ble Supreme Court has held that the burden is on the claimants to prove by adducing reliable evidence that the compensation offered by the Land Acquisition Officer is inadequate and the lands are capable of fetching higher market value. It is the duty of the Court to closely scrutinize the evidence, apply the test of prudent and willing purchaser i.e. whether he would be willing to purchase in open and normal market conditions of the acquired lands and then determine just and adequate compensation.

11. In another decision reported in 1996 (3) SCC 766 Hookiyar Singh and others v. Special Land Acquisition Officer, Moradabad and another, the Hon'ble Supreme Court has held that it is settled law that the burden of proof of market value prevailing as on the date of publication of Notification under Section 4 (1) of the L.A. Act is always on the claimants. The Hon'ble Supreme Court has also held that though the Apathy and Blatant lapse on the part of the acquiring officer to adduce evidence and also improper or ineffective or lack of interest on the part of counsel for the State to examine the witnesses, on material facts it is the duty of the Court to carefully scrutinize the evidence and determine just and adequate compensation. All these decisions of the Hon'ble Supreme Court clearly speaks that it is the burden of the claimants to satisfy the Court that the compensation awarded by the Land Acquisition Officer is inadequate.

12. The State of Bihar-respondent has also examined 4 witnesses P.W.1 has stated that Notification was published on 17.09.1982. On the basis of average of sale proceeds for 3 years prior to acquisition was considered and the market value was fixed. O.P.W.2 is Amin. This witness has stated that spot inspection of the land was made and it was found that some portion of the acquired land was Gaddha (ditch). During the course of the investigation, no tree was found on the land. O.P.W. 3 has stated that from Naugachia Marwari Dharmshala, the land is at the distance of 2250 feet in the North. The market is in the North of Dharmshala. O.P.W.4 has also stated that acquired land is 1 K.M. away from the market. Therefore, the respondent has adduced evidence to the effect that the acquired land was purely agricultural land and no trees were in existence at the time of acquisition and no house was there. The land is 1 k.m. away from the Bazar. From the discussion of the above evidence, it appears that there are oral evidences v. oral evidences. Therefore, it is not safe to rely upon the evidence of the claimant and on the basis of that market value cannot be fixed.

13. The appellant has also adduced documentary evidences and two sale deeds. Ext.1 is the sale deed dated 20.10.1989 and Ext.2 is dated 18.11.1983. As stated above, the sale deed Ext.1 is of the year 1989 and the land has been acquired in the year 1982. Therefore, the Ext.1 cannot be taken into account for determining market value. Likewise, the sale deed Ext.2 is also of the year 1983, i.e., dated 18.11.1983 and only 15 dhurs land have been shown by this sale deed for Rs.15,000/-. Very small area is involved in the sale deed and that too after completion of the acquisition processes. Therefore, it appears that it is a created document and moreover since it covers a very small area which cannot be taken as comparable sale instance, in my opinion, therefore, this Ext.2 also cannot be based for determination of the prevalent market rate. From perusal of the impugned Judgment and Award, it appears that the learned Court below has therefore, rightly not relied upon these oral and documentary evidences. I find no reason to interfere with the said findings.

14. In view of my above discussion, I find that the appellant has failed to prove the prevalent market value of the lands acquired as claimed by him. The finding of the learned Court below is, therefore, hereby confirmed.

15. In the result, I find no merit in this First Appeal and accordingly, this First Appeal is dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

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