

(2005) 02 JH CK 0012**Jharkhand High Court****Case No:** A.F.O.D. No. 283 of 1995 (R)

Mohan Singh (deceased),
through LRs.

APPELLANT**Vs**

State of Bihar

RESPONDENT**Date of Decision:** Feb. 22, 2005**Acts Referred:**

- Land Acquisition Act, 1894 - Section 4

Citation: (2005) 2 JCR 584**Hon'ble Judges:** Hari Shankar Prasad, J**Bench:** Single Bench**Advocate:** Jaya Roy and Tapas Roy, for the Appellant; Shamim Akthar, SC II, for the Respondent

Judgement

Hari Shankar Prasad, J.

This appeal at the instance of the appellants is directed against the judgment dated 14.11.1995 and award dated 25.11.1995 passed in LA Ref. Case No. 18 of 1992 whereby and where under the learned Land Acquisition Judge dismissed the reference.

2. Pursuant to the notification u/s 4 of the Land Acquisition Act, the Land Acquisition Officer, Subarnarekha Project, Chandil referred the Award Nos. 473 and 474 to the Land Acquisition Judge-cum- Subordinate Judge-I, Seraikella and Award Nos. 473 and 474 had been prepared in the name of Mohan Singh. The Award No. 473 is in respect of the house bearing plot No. 369, Khata No. 50 compensation amount has been fixed at Rs. 24,653.19 paise and Award No. 474 is in respect of house bearing plot No. 369, Khata No. 50 of village Anda. The compensation amount has been fixed at Rs. 14,512.40 paise, whereas the plaintiff has claimed Rs. 1,25,000/- and Rs. 75,000/-respectively for both the awards.

3. The case of the plaintiff-applicant is that the house standing on the plots were acquired for the purpose of Suarnarekha Dam Project and houses belonged to the applicant and he is in exclusive possession over the same. It is said that house of Award No. 473 is a big house measuring an area of 30 ft. in length and 12 ft. in width and 15 ft. in height. The walls of the house are of stone built and roof is of tiles. There are two doors. Whereas house of Award No. 474 is a big house measuring an area of 14 ft. in length, 12 ft. in width and 12 ft. in height. The walls of the house are built of stone and bricks and the roof is of tiles. There are two doors and there is six ft. wide thatched house attached to the house all along its length in one side. The applicant received the amount on 11.6.1991 on protest for the lowest rate in comparison to the house of other raiyats. The applicant claims that the present market value of the house of Award No. 473 will not less than Rs. 1,25,000/-, whereas the market value of house under Award No. 474 will not be less than Rs. 75,000/-.

4. The State of Bihar has contested the suit but no show-cause was filed and the learned Court below after considering the evidence on record brought during trial, assessed the evidence and came to a finding that the award prepared by the Land Acquisition Officer is just and proper and dismissed the reference.

5. On behalf of appellant-claimants, four witnesses have been examined in this case. AW 1 is Sasti Pado Das. AW 2 is Yudhistir Mahato. AW 3 is Prabhakar Poddar and AW 4 is Mohan Singh who is applicant himself.

6. AW 1 has come to say that houses and bari of the applicant have been acquired for Subarnarekha Project and two houses have been acquired and out of two houses, one house is such whose valuation should not be less than two lakhs. He has given length, breadth and height of the house and also the trees standing in the bari of the houses. Besides this, he has stated that walls have been built of stone. He says that there are three rooms in the house and there is well whose valuation should be around Rs. 50,000/- as it is 30 ft. deep and its diameter is 8 meter and it is built up of stone. He has further stated that there are trees also.

7. AW 2 has stated that two houses of the applicant were acquired and compensation was given and the compensation which was given is very low. He has given description of length, breadth and height of the houses and also has stated that there are three rooms; the roof is of tiles and wall is soil built. There is also a well but the compensation for the well has not been given. According to this witness, valuation of these houses should be around Rs. 2,50,000/- including valuation of well and challa. Both the witnesses have admitted that there is no factory near the houses concerned.

8. AW 3 has also stated more or less same thing.

9. AW 4 who is applicant himself, has stated that the valuation of the houses is about Rs. 1,50,000/- and proper valuation of all things including well and houses will be

about Rs. 2,50,000/-.

10. On the other hand, two witnesses have been examined on behalf of the State. OPW 1 has measured the land and houses of applicant. He has admitted that walls are soil built and roof is of tiles. He has submitted his report which is Ext. A. He has not measured length, breadth and height of the houses and how many rooms are there in the houses. According to this witness, there is no well.

11. OPW 2 is a surveyor and has surveyed the land and houses of the applicant. He has come to say that one house which is 28 ft. X 13 ft. X 10ft. He says that the walls are of soil built and roof is of tiles and there is only one door. About second house, he says that it is 46-1/2 ft. in length and 11-1/2 in width and 9-1/2 ft. in height and the walls are of soil built and roof is of tiles and there is only one door of tin. He has also stated that there is osara of 46-1/2 ft. in length and 5 ft. in width and 6 ft. in height with thatched roof. He has also stated about other osara of 31 ft. in length, 7 ft. of breadth and 6 ft. in height with thatched roof. He says that there is one well which is 42 ft. deep and 10 ft. perimeter and 7 ft. diameter and walls are cemented. There is a temple of 7 ft. in length and 2-1/2 in width. There is one house of 22 ft. in length, 15 ft. width and 9-1/2 ft. height and walls are made of soil and has thatched roof but that belongs to Shyam Lal Singh. He has proved Ext. B, B/1 and C.

12. Ext. A is schedule of the house of the applicant-appellant in which area and rate have been mentioned. The valuation has been given with regard to both the houses which are Rs. 16,885 and Rs. 9,940 respectively and both come to Rs. 26,820/-Ext. B is schedule of the land of the applicant which shows that same has been prepared by OPW 2 and he has given full description of the land.

13. It was submitted on behalf of the appellant-complaint that the learned Court below has not correctly appreciated the exhibits filed on behalf of the State-respondent and has come to a wrong conclusion and that since applicant has not mentioned about the existence of the land and other things in survey and since these things have not been mentioned, it does not mean that these things do not exist there. It was further pointed out that out of two witnesses examined on behalf of the State-respondent, OPW 1 has stated some thing and OPW 2 has stated altogether different thing. But question is that OPW 2 is Amin and he is a competent in measuring and seeing things existing on the land and he has stated that there is well, trees and temple, etc. whereas OPW 1 has not stated anything like that but this does not mean that these things do not exist there because so far as purpose of spot verification of the properties is concerned, the OPW 2 is more competent person than OPW 1, therefore, valuation given by the OPWs 1 and 2 is not proper and there is difference of opinion in the evidence of witnesses of both sides.

14. On the other hand, learned State counsel has submitted that correct valuation has been assessed by the State Government and there is no scope for any interference.

15. On a careful scrutiny of the evidence of witnesses and all documents produced on behalf of the parties, it appears that there is difference in the evidence of OPWs 1 and 2 and, OPW 2 has found well, temple and so many rooms in the houses spread over such long area, although witnesses have admitted that there is no factory near the houses, still the valuation of the houses together with trees etc. has not been correctly assessed and in my view, amount of compensation has been fixed by the Land Acquisition Officer is very low and it requires interference. The amount of compensation fixed for each of the houses should be double than the amount of compensation fixed by the Land Acquisition Officer and on reference of the awards, the finding of the learned Land Acquisition Judge is not based on facts existing on record.

16. In that view of the matter, considering the evidence on record, the amount of compensation fixed at Rs. 24,653.19 paise for one house is enhanced to Rs. 49,306.38 paise and the amount of compensation fixed at Rs. 14,512.40 paise for another house is enhanced to Rs. 29,024.80 paise with all statutory reliefs.

17. In the result, this appeal is partly allowed and the judgment and award of the learned Court below is hereby set aside. However, in the circumstances there will be no order as to costs.