

**(2004) 09 JH CK 0032**

**Jharkhand High Court**

**Case No:** A.F.O.D. No. 173 of 1994 (R)

State of Bihar

APPELLANT

Vs

Haricharan Mian and Another

RESPONDENT

**Date of Decision:** Sept. 29, 2004

**Acts Referred:**

- Land Acquisition Act, 1894 - Section 4, 9

**Citation:** (2005) 2 JCR 257

**Hon'ble Judges:** Hari Shankar Prasad, J

**Bench:** Single Bench

**Advocate:** Manju Prasad, for the Appellant; None, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

Hari Shankar Prasad, J.

This appeal is directed against the judgment dated 29th March 1993 and award dated 19.4.1993, subsequently amended on 24.2.2004, passed in the Land Acquisition Case No. 2 of 1985 whereby and whereunder the Sub-Ordinate Judge-cum-Land Acquisition Judge, Giridih allowed the reference and enhanced the compensation.

2. Pursuant to the notification u/s 4 of the Land Acquisition Act, 58 decimals of land bearing Khata No. 28, plot No. 1561 situated in village Ulber, PS Bagodar was acquired by the State Government for construction of Bagodar Branch Cannal and compensation of Rs. 5,885.61 paise was fixed and awarded in the name of the respondents.

3. The case of the applicant-respondent is that the land under acquisition was first class bari land and petitioner used to grow four crops in a year i.e. potato, wheat, maize and vegetable. There was a pucca well in the land and there was sufficient means for irrigation. On the other hand, the Land Acquisition Officer has fixed compensation which is very low and it is not according to the prevalent market rate.

According to the prevailing market rate, rate of the similar land in the vicinity of the acquired land was fixed at the rate of Rs. 40,000/- per acre and, therefore, applicant-respondents are entitled to get a sum of Rs. 40,000/- as the amount of compensation of their acquired land with interest. It is stated that the applicants-respondents had made protest u/s 9 of the Land Acquisition Act before the Land Acquisition Officer, Giridih.

4. On the other hand, the State of Bihar appeared and contested the case but raising oral objection only and no show-cause was filed. The objection raised by the appellant-opposite party is that the case is not legally maintainable and the respondents-applicants had filed this case with wrong and incorrect allegations and that no objection u/s 9 was filed by the applicants-respondents. The reference is not maintainable and the compensation paid is proper and adequate.

5. On behalf of the claimants-respondents, some witnesses have been examined AW 1 is Suleman Mian. Who is applicant in this case. He has stated that the acquired land is the first class bari land and there is well in the land from which the land is irrigated. He has further stated that from this land he grows four crops such as paddy, wheat and sugarcane in a year and rate of the similar land in the vicinity at the time of acquisition was at the rate of rupees one lakh per acre. On the other hand, the Land Acquisition Officer, Giridih fixed the price of the said and below the prevailing market rate which is arbitrary and against the provisions of Land Acquisition Act. But he has denied that he has purchased any land or sold any land of nearby area; rather he says that for the last twenty years no land in and around the vicinity of the acquired land has been sold. Other witnesses have also stated that sale rate of the acquired land at the time of acquisition should have been rupees one lakh per acre, as the sale rate of land in and around the area in the vicinity of the acquired land, was rupees one lakh per acre.

6. AW 2 has also stated more or less same thing. PW 3 is Khagendra Prasad Sahu who belongs to the village Choudher-bandh which is another village. He has stated that this village is at a distance of three kilometers from village Ulbar, but he has stated that the acquired land is a first class bari land and it yields four crops a year. He also confirms that there is a well in the plot for irrigation purposes and the sale rate of the land in the locality at the time of acquisition was rupees one lakh and fifty thousand per acre.

7. Besides production of the oral evidence, claimant has filed judgment of LA Case No. 3 of 1985 which is Ext. A. In LA Case No. 3 of 1985 land was acquired for the same purposes for which the land of the instant case have been acquired and in that case rate was fixed by the Land Acquisition Judge at the rate of Rs. 38,000/- per acre for Dhanhar land and Rs. 23,000/- for second class Dhanhar land and Rs. 19,000/- per acre for third class Dhanhar land.

8. Opposite party-appellant has not produced any witness but has filed Ext. A which is khatiyan, from perusal of which rate of the land per acre has been fixed by the Government, but it does not say on what basis the sale rate of acquired land has been fixed by the Government. No certified copy of the sale deed which was adopted for fixing price of the land, has been produced and no reason has been assigned. In his connection, finding of the learned Court below may be quoted here:--

"From perusal of L.A. Khatiyan (Ext. A) it transpires that Land Acquisition Officer has determined the sale rate of the acquired land of the applicants @ about Rs. one hundred per decimal and award was prepared for Rs. 6885.61 paise for total acquired land of the applicants measuring 58 decimals. It is admitted that the acquired land of the applicants had irrigational facility because there is 20 feet wide well in the said plot. It is also evidence that the acquired land yielded at least two crops in a year such as paddy and any other crops wheat, sugarcane or potato. It is well known to all that sale rate of the land is rising yearly. Therefore, in my opinion the valuation fixed for the acquired land of the applicant by the Land Acquisition Officer, State of Bihar is low than its actual price to its relevant time.

Considering the site situation, location and potential value of the land, the sale rate of the acquired land of the applicant should be fixed @ Rs. 500/-per katha. The applicants are also entitle to receive solemtium @ 30% on the enhanced amount. The applicants are also entitle to receive interest @ Rs. 9% per annum on the enhanced amount from the date of possession till the date of payment.

It is, therefore, ordered that in the light of observation made above, the applicants are entitle to get the price of land so acquired @ Rs. 500/- per kathas. They are also entitle for solemtium @ 30% on the enhanced amount and interest @ 9% per annum from the date of possession till the date of payment. Accordingly he reference is partly allowed on contract and he award of the Collector is modified accordingly."

9. From the discussions made above, I do no find any reason to interfere with the findings of the learned Court below, as no oral evidence has been produced on behalf of the State, nor Ext. A which is a sale deed, is based on scientific valuation of the land. In the result, this appeal is dismissed. No order as to costs. Appeal dismissed.