
(2017) 02 MP CK 0114

MADHYA PRADESH HIGH COURT

Case No: 184 of 2002

Mohd. Shakeel

APPELLANT

Vs

Smt. Husna Bano &
Others

RESPONDENT

Date of Decision: Feb. 8, 2017

Acts Referred:

- Code of Civil Procedure, 1908, Section 96, Section 96 - Appeal from original decree - Appeal from original decree
- Land Acquisition Act, 1894, Section 18</

Hon'ble Judges: J P Gupta

Bench: Single Bench

Advocate: Rajesh Nema

Judgement

1. This judgment shall govern the disposal of aforesaid First Appeals, as both arises against the same judgment. Both the first appeals have been filed under section 54 of the Land Acquisition Act read with section 96 of the Code of Civil Procedure against the judgment dated 29/11/2001 passed by the VIth Additional District Judge, Jabalpur in Land Acquisition Case No.18/1991 arising out of the reference under section 18 of the Land Acquisition Act (hereinafter in short referred as Act) against the award dated 01/02/1984 passed by the Land Acquisition Officer, Jabalpur in Land Acquisition Case no.141-A/82 of 1982-83.

2. That the brief facts of the appeals are that appellants ownership lands were acquired by the respondent no.1 by notification dated 28/07/1983 issued under section 4(1) of the Act for the purpose of construction of subdistributory canal for irrigation purpose. The lands of the appellants situated in the village Mudia along with lands of other persons of nearby villages were also acquired for the same purpose total 12.855 hectares of land

was acquired owned by 22 different persons and Land Acquisition Officer by award dated 01/02/1984 determined compensation in which the market value of the land was fixed at the rate of Rs.13,512/- per hectare and for the 5 trees of babool situated in the land of applicant Vijay Chand valued Rs.623/- and accordingly with all statutory benefits compensation was awarded. For 5 different trees situated in the land of applicant Smt. Jyoti Kumari ownership and for division of land into two parts compensation was determined Rs.5067/- and was directed to be paid with other statutory benefits.

3. Against aforesaid award both applicants and other claimants submitted application for reference to the civil court claiming that the market value of the land be determined Rs.2,25,000/- per hectare as at the time of acquisition this rate was prevailing in the market. Apart from it, appellant Vijay Chand of F.A No.184/2002 further claimed that at the time of taking possession of the land crop was standing which valued Rs.3000/- should be given as compensation and for the loss of medhe Rs.3000/- and for reconstruction of medhe Rs.2500/- respectively and for the value of trees Rs.8000/- be also given as compensation with all statutory benefits. On behalf of the appellant Jyoti Kumari of F.A No.185/2002 claimed that no compensation has been determined for the loss of standing crop valued Rs.5000/- and destruction of medhe valued Rs.6000/- and cost of new constructed medhe Rs.2000/-, therefore, aforesaid amount be given as compensation with other statutory benefits. Similarly, value of trees Rs.8000/- be also given.

4. On behalf of the respondent, it was replied that the compensation determined by the Land Acquisition Officer is in accordance with law. Hence their application under section 18 of the Act be dismissed. The Reference Court after trial passed the impugned judgment dated 29/11/2001 and rejected all claims of the both applicants and held that the compensation determined by the Land Acquisition Officer is correct and requires no interference.

5. Against the aforesaid finding, both applicants have filed these appeals and claim to determine the compensation as claimed by them before the reference court as reference court has dismissed their claims without appreciating the facts, evidence and law in right perspective. The finding of learned lower court is perverse, therefore, the impugned order be set aside and both appeals be allowed.

6. On behalf of the respondent, learned Panel Lawyer of State has submitted that finding of learned reference Court are correct and legal and compensation has been determined in accordance with law, hence both appeals be dismissed.

7. Having considered the contention advanced by learned counsel for the parties and on perusal of the record in these cases following questions arise for determination:-

(1) Whether the market value of the acquired land fixed by the Land Acquisition Officer and confirmed by the court below is correct or requires any interference. If yes, then what would be the market value of the acquired land ?

(2) Whether appellants are entitled to any compensation for standing crops ?

(3) Whether market value and compensation determined for the trees situated on the acquired land of appellants is correct or requires any interference. If yes, then to what extent ?

(4) Whether appellants are entitled to any compensation for damage or loss caused to the medhe and for construction of new medhe. If yes then to what extent ?

(5) Whether the appellant Smt. Jyoti Kumari of F.A No. 185/2002 is also entitled for compensation for division of her remaining land in two parts ?

(6) Relief and cost ?

8. Question No.1:- On perusal of the record, it is found that for determination of market value of the land, the applicants have submitted three sale-deeds relating to the land sold nearby the date of acquisition. The learned lower court has ignored the aforesaid sale-deeds on the basis that they belonged to different village as Ex.P-1 and Ex.P-3 sale-deeds are related to transaction of land situated in village Kheri and Ex.P-2 sale deed is related to land situated in village Bhitoni. Learned lower court has not committed any error in ignoring the aforesaid sale- deeds as the comparison can be done between the land situated near the acquired land or have the same quality and sold nearby the date of acquisition and it appears from the oral evidence that village Kheri and village Bhitoni are too far from the village Mudia. Therefore, on the basis of sale-deeds of other village market value of acquired land cannot be determined.

9. On behalf of the applicant Vijay Chand (DW-16) has stated that on the acquired land per year he get benefit of Rs.7000/- per acre. Tek Singh (DW-10) has also stated that in the year near about 1984 he took land of applicant Vijay Chand on sikmi and paid Rs.7000/- for a year and area of the land was nearby 2 and 1/2 acre. Therefore, as per statement of DW-10 the yearly benefit of the land was nearby about Rs.3000/- per acre. The statements of both witnesses are not supported by any documentary evidence and have a wide difference in per year income from the acquired land, therefore, their statement cannot be considered for determination of per year net benefit of yield of the

land. Therefore, the learned lower court has also ignored the aforesaid evidence for the purpose of determination of value of the land on the basis of per year yield of the land.

10. In the aforesaid circumstances, the learned lower court has rejected the claim of both appellants and confirmed the valuation determined by the Land Acquisition Officer, but on perusal of the award passed by the Land Acquisition Officer, it appears that at the time of acquisition of applicants lands and other lands situated in other 14-15 villages were acquired total area acquired was 73.104 hectares and on the basis of average of sale deeds of different villages at the relevant time value of land of all villages was fixed Rs.5,472/-per acre or Rs.13,512/- per hectares. The relevant papers shows that in the year 1982 in the village Mudiya 3 lands were sold and if their average value be considered for determination of the acquired land which belong to village Mudiya would be more appropriate and justifiable. On the basis of documents produced on behalf of the respondent Ex.D-5/C makes it clear that total land 4.30 hectare was sold in Rs.68,000/-. Accordingly average price of the land situated in village Mudiya sold during the year 1982 comes out Rs.15,800/- per hectare, which is the rate one year before the date of acquisition ie 28/07/1983 and 10-12% further enhancement in price as an escalation be considered then market value of the acquired land would come out nearby Rs.17,500/- per hectare.

11. In view of the discussion, it is held that the market value of the acquired land fixed by the Land Acquisition Officer and by reference Court is not correct and it ought to have been fixed at the rate of Rs.17,500/- per hectare. Accordingly the aforesaid question is answered.

12. Question No.2:-On behalf of both applicants, it is also claimed that at the time of taking possession, their crops were standing and applicant Vijay Chand (DW-16) has stated that at the time of taking possession wheat crop was standing which was destroyed and caused damage of Rs.3000/- and similarly the crop of applicant Smt. Jyoti Kumari was also damaged, which was valued Rs.5000/- but in this regard no document relating to taking of possession produced in which condition of the land is recorded at the time of taking of possession. The award dated 01/02/1984 (Ex.D-1) itself stated that the possession will be taken after the cutting of standing rabi crop, therefore, it cannot be deemed to be proved that at the time of taking possession of the acquired land any crop was standing, therefore it cannot be said that applicants are entitled to any compensation for the standing crops. In this regard rejection of the applicants claim by the learned lower court is correct and does not require any interference. Accordingly the aforesaid question is answered.

13. Question No.3:- Applicant Vijay Chand has claimed that in the acquired land there were 8 babool trees for which he is entitled to Rs.8000/- and applicant Smt. Jyoti Kumari has claimed that for the trees situated in her acquired land she is entitled for Rs.8000/- compensation. While Land Acquisition Officer has awarded Rs.623/- for trees on the

acquired land of applicant Vijay Chand and for trees belonging to applicant Smt. Jyoti Kumari additional compensation Rs.2183/- have been awarded as stated by Tulsiram (DW-1). It is also stated by Tulsiram (DW-1) that compensation for trees was fixed on the basis of rate determined by the Commissioner. On perusal of the record, it appears that there was no cogent and clear evidence to prove the fact that how many trees were standing at the time of acquisition of land or at the time of taking of possession of the land. In this regard general averments have been made in their statement by Vijay Chand (DW-16) and similarly for showing the yearly yield from the trees some witnesses have been produced, but in absence of producing entries in revenue record or possession report or any other documentary proof, it cannot be said that the Land Acquisition Officer has counted less trees for the purpose of determination of compensation. Similarly for determination of value of any tree its size, weight, height, width, age, quality are the determining factor of tree. In this regard no specific and cogent evidence is available on record. Therefore, value and compensation determined by the Land Acquisition Officer be accepted correct. Therefore, it is held that the value of trees determined by the Land Acquisition Officer and confirmed by the reference court is correct and does not require any interference. Accordingly the aforesaid question is answered.

14. Question No.4:-Both applicants have also claimed compensation for destruction of medhe and cost of reconstruction of medhe but on perusal of record, it appears that in this regard also general averments have been made in the statement of applicant Vijay Chand and no length, height and width and cogent material has been specified. Without such evidence no right compensation can be determined. Applicant-Vijay Chand land would require new construction of medhe as his old medhe of one side went with the acquired land. In this regard Rs.1000/- may be awarded as compensation. So far as applicant Smt. Jyoti Kumari is concerned her acquired land was separated and she would have constructed its medhe in two sides, therefore she may be awarded Rs.2500/- for construction cost of medhe. In such situation, for destruction of old medhe applicant is not entitled to get any compensation. As the old medhe was destructed therefore new medhe was constructed then expenses for construction of new medhe only be considered for compensation. Accordingly, applicant Vijay Chand is entitled to Rs.1000/- as compensation with regard to the medhe and applicant Smt. Jyoti Kumari is entitled to Rs.2500/- as compensation with regard to the medhe. Accordingly, the aforesaid question is answered.

15. Question No.5:-Smt. Jyoti Kumari applicant of F.A No.185/2002 has also claimed more compensation for inconvenience caused due to division of her land on account of construction of canal across her land. It is found that in this regard Land Acquisition Officer has awarded Rs.1238+222/-=1460/-. The compensation determined for the inconvenience caused by division of the land is apparently very meager it should be near about Rs.3000/-. Hence it is held that the compensation determined for the inconvenience caused due to suppression of land of the applicant Smt.Jyoti Kumari she is entitled to get Rs.3000/- as compensation in place of Rs.1460/-. Accordingly, the aforesaid question is

answered.

16. Relief and cost:-In view of the aforesaid discussions, appellant"s appeals deserves to be partly allowed and accordingly these appeals are partly allowed to the extent that appellants are entitled to the compensation for the acquired land at the market rate of Rs.17,500/- per hectare along with all statutory benefits. Further applicant Vijay Chand is entitled to Rs.1000/- as compensation for construction of medhe and applicant Smt. Jyoti Kumari is entitled to Rs.2500/- as compensation for construction of medhe. Applicant Smt.Jyoti Kumari is also entitled to the compensation of division of her land to the tune of Rs.3000/-along with other statutory benefits. The respondents are directed to pay enhanced amount as mentioned above with further interest under section 28 of the Act and appellants are also entitled to get the cost of the appeal in which advocate fee be added Rs.3000/-each subject to certification as per law. Certified copy as per rules.