

(1969) 02 SC CK 0079

Supreme Court of India

Case No: Civil Appeal No. 502 Of 1966

State of Orissa

APPELLANT

Vs

Baishnab Sahu and Another

RESPONDENT

Date of Decision: Feb. 6, 1969**Citation:** (1970) 3 SCC 781**Hon'ble Judges:** M. Hidayatullah, J; G. K. Mitter, J**Bench:** Division Bench**Final Decision:** Disposed Of

Judgement

G.K. MITTER, J.-This is an appeal from a judgment of the High Court of Orissa in a land acquisition case where the arbitrator had awarded Rs 25,783.02 as compensation for the land of the respondents acquired for the purpose of the construction of Hirakud Dam across the River Mahanadi. The acquisition took place in 1955. The extent of the lands acquired was Acres 13.39 comprising of three classes of lands, namely, (1) Bahal or first class paddy lands Acres 9.07; (2) Dorna or second class paddy lands Acres 2.52, and (3) Mal or third class paddy lands Acres 1.80. The lands were acquired under the provisions of Orissa Act 18 of 1948. Section 7(1)(c) of that Act provided that in fixing the amount of compensation payable to dispossessed owners the Arbitrator shall have regard to the provisions of sub-section (1) of Section 23 of the Land Acquisition Act while estimating the market value thereof. But the second proviso to clause (e) of sub-section 1 of Section 7 provided that where under any law or custom the lands which are acquired are not saleable, the market value of such lands shall be such multiples as may be prescribed of the deduced rent to be calculated in the prescribed manner, with an addition of 15%. There is no dispute, at least there was none before the High Court, that the lands were Ryoti lands of Sambalpur district and were governed by the provisions of G. P. Tenancy Act, 1968, as modified from time to time. Section 46 of that Act provided for restrictions on the sale of the lands of an occupancy tenant, but the rigour of this provision was considerably lessened, by the Amending Act 13

of 1953. In consequence of this amendment, the occupancy tenant was given freedom to transfer his holdings or a portion thereof to a bona fide agriculturist. The High Court found itself unable to rely upon the exemplars filed for arriving at the valuation of the lands and accepted the method prescribed by the second proviso to clause (e) of sub-section (1) of Section 7.

2. The points which were canvassed before us were : (1) that the High Court had gone wrong in treating the lands as freely saleable; (2) that the High Court went wrong in awarding compensation on the basis of the produce of the land and capitalising the same at 16 times the net annual income from the lands less expenses; and (3) that the High Court should not have awarded 15% by way of solatium on the value of the lands acquired.

3. The respondents were not represented before us, but learned counsel for the State placed all the material on the record very fairly before us. With regard to the first point, the High Court found, relying on the Hamid Settlement Report, 1934, that the population of the district was composed of 80% agriculturists and therefore there was complete freedom of transfer for all practical purposes. Mr Mahajan made over to us a chart showing the population of Sambalpur district from 1901 to 1951 as culled from the Census reports and according to the latest census report, the population had gone up to 13,01,804 from 7,89,258 being the corresponding figure in 1901 on which Hamid Settlement Report was based. But this does not show that there had been diminution in the agriculturist population of the district and normally as would proceed on the basis that in a district which affords little scope for any occupation other than agriculture, the percentage of agrarian population would not go down. We are therefore of the view that the High Court was right in coming to the conclusion that the lands were freely saleable and there is no question of any depreciation in the value of the land by reason of any restriction on the right to transfer the lands.

4. The High Court found itself unable to rely on the oral and documentary evidence furnished by the exemplars to assess the market value of the lands. Learned Counsel drew our attention to the oral evidence and also to copies of the deeds which were before the High Court. Exs. A, B, C and D which were filed by the claimants and proved through evidence show that in respect of the transaction of sale covered by Ex. A which took place on April 16, 1959, the extent of the land was Acres 1.40, the value per acre being Rs 1785/-. Ex. B which relates to the year 1957 gives the figure as Rs 1120, the area being Acres 2-86. Ex. C, dated April 4, 1957, relates to an area of Acres 0.55 and the price per acre was Rs 1818. Ex. D, dated 8th August, 1957, is in respect of an area of Acres 0.22 giving the price per acre as Rs 1727. As against the above, the State relied upon Exs. 1, 2 and 3. Ex. 1 bears the date 14th September, 1959, the area being Acres 1.68 and the price per acre was Rs 120. Ex. 2, dated October 1, 1955, was in respect of Acres 4.00 and the value per acre being Rs 75 per acre. Ex. 3, dated March 22, 1955, was in respect of Acres 4.05 giving

the value at Rs 300 per acre. We find ourselves unable to go by the exhibits relied upon by the State. Exs. A, B, C and D also are not of the year 1955. One of the witnesses for the claimants, Anithu Das, stated in his deposition that the prices were rising during the five years from 1955 to 1959; he also stated that during the year of submergence, the land in his village was being sold for Rs 1200 per acre. Taking into account the fact that Exs. A, B, C and D do not relate to the year of submergence and also bearing in mind the rise in price of lands after the year of submergence, we hold that Rs 1200 per acre would be a fair value to be fixed for purposes of the compensation and at the rate so fixed the value of the lands acquired would come to Rs 16000. As the Arbitrator had to take into account the principles of the Land Acquisition Act, we think the above figure should be augmented by 15% by way of solatium in view of the compulsory nature of the acquisition. This brings the figure to Rs 18400 as the amount of compensation payable. We therefore reduce the arbitral amount to Rs 18400. In the circumstances of the case, we make no order as to costs of this appeal.