

Jiwan Lall and Others Vs Collector

Court: Patna High Court

Date of Decision: Jan. 9, 1968

Acts Referred: Land Acquisition Act, 1894 " Section 18, 23, 4, 48, 6

Citation: (1968) 16 BLJR 496 : (1968) 1 PLJR 140

Hon'ble Judges: N.L. Untwalia, J; B.P. Sinha, J

Bench: Division Bench

Judgement

N.L. Untwalia, J.

This is an appeal from the award and decree of the first Additional Judicial Commissioner of Chotanagpur, Ranchi, in

Land Acquisition Reference Case No. 60 of 1960. By a notification dated the 30th May, 1956 (Exhibit Ta), published in the Bihar Gazette of July

4, 1956, u/s 4 of the Land Acquisition Act, 1894 (hereinafter called the Act), 53.35 acres of land situated in Mouzas Argora, Karru and Hinoo

were acquired by the State of Bihar for construction of officers' quarters. Out of these lands, 14.55 acres, forming parts of revisional survey plot

Nos. 3912, 3913, 3914 and 3915 of village Argora and plot No. 920 of village Karru, belonged to the appellants. The lands were notified to be

acquired for construction of officers' quarters. It appears that this purpose was later on abandoned and the acquisition proceedings were

completed and the lands were acquired and made over to Hindustan Steel (P) Limited. Declaration u/s 6 had been published prior to the

abandonment of the purpose as stated in the notification u/s 4 on the 4th December, 1957. On the 7th January, 1959, a letter which is part of

Exhibit 5 (Kha) is said to have been written to the Accountant General, Bihar, as to whether he would like to have the land for the purposes of the

Accountant General's office. A reply dated the 21st of January, 1959, was given by the Accountant General which is also contained in Exhibit

5(Kha), making some enquiries in connection with the details of the land. It, however, appears from Exhibit Kha/1, the order sheet of the Land

Acquisition Officer, that the matter was not finalised with the Accountant General's office and, eventually, on the 20th April, 1959, order No. 18

was recorded by the Land Acquisition Officer stating that it had been decided to acquire the land by the State Government for transfer to the

Hindustan Steel (P) Limited and in the month of April, 1959 the land was acquired and made over to the Hindustan Steel (P) Ltd. This fact further

finds support from the letter dated the 16th April, 1959, Exhibit 5 (Ga), from the Deputy Secretary, Government of Bihar, to the Deputy

Commissioner, Ranchi.

2. The Land Acquisition Officer finalised and gave his award on the 22nd April, 1959. He proceeded upon the rate reports of the Kanungo and

valued the lands dividing them in two classes. He fixed for class A land the value of Rs. 12,000/- per acre and for class B land at Rs. 7,000/- per

acre. A reference was made to the Judicial Commissioner at Ranchi u/s 18 of the Act at the instance of the appellants. The reference has been

disposed of $\frac{1}{2}$ by the Additional Judicial Commissioner who has fixed the average market rate of the lands acquired with reference to the date

when the notification u/s 4 was made. This average rate has been fixed at Rs. 397.40 P. per katha which would, roughly, work up to Rs. 23,820/-

per acre. Out of the value as fixed, the learned Additional Judicial Commissioner has reduced the price by 40 per cent for the reasons stated in his

judgment and has further made reduction of 25 per cent on account of the rayati lands measuring 2.10 acres, the remaining area 12.45 acres being

land of chhapparbandi character.

3. Mr. K.D. Chatterji, learned Counsel for the appellants, submitted in the first instance that the market value of the lands prevailing in early 1959

ought to have been taken into consideration for determining the price of the land acquired. He contended that the original purpose having been

abandoned, the lands will be deemed to have been acquired by a fresh notification issued sometime in January 1959 for the purpose of Hindustan

Steel (P) Ltd. In my opinion, there is no substance in this argument. Mr. Chatterji had to concede, and he did concede fairly, that the validity of the

acquisition proceedings cannot be challenged in the present appeal. At no point of time by any appropriate proceeding or suit, the acquisition for

the public purpose was attacked or assailed. On the other hand, the appellants asked for a reference u/s 18 of the Act. The scope of such a

reference on the facts of this case was limited to the quantum of compensation payable to them. Even though the purpose for which the lands were

notified to be acquired was subsequently changed, that would not affect the law contained in Section 23 of the Act that the market value of the

land has got to be determined at the date of the publication of the notification u/s 4 of the Act. The lands were acquired on the basis of the

notification Exhibit Ta. The notification was not withdrawn u/s 48 of the Act. No fresh notification was issued, no procedure for acquisition of the

land for the purpose of the company was followed, Therefore, for the purpose of determination of valuation it is difficult to accept the argument put

forward on behalf of the appellants that the notification u/s 4 should be deemed to have been issued sometime in January, 1959 when, on the

evidence in the records of this case, the original purpose was given a go-by and the proceedings were carried on for acquisition of land for a

changed or different purpose.

4. It was next submitted on behalf of the appellants that according to the rate reports, the quality of the lands in question was better than the quality

of the lands which had been acquired a few years earlier and some arithmetical mistake had been committed in the rate reports in arriving at the

rate of Rs. 12,000/- per acre and Rs. 7,000/- per acre. It was further submitted that the learned Additional Judicial Commissioner has committed

an error in excluding out of consideration two sale deeds, Exhibits 1 and 1(Ka), under which lands in the vicinity had been sold on the 29th of

October, 1956, at a much higher rate of Rs. 575/- per Katha. Learned Additional Government Pleader, in reply, submitted that the Court below

has committed no error in excluding Exhibits 1 and 1(Ka) from consideration rather it has erred in taking into consideration Exhibit 13 and working

out the average figure of Rs. 397.40 P. per Katha on the basis of Exhibit 13 and two sale deeds, Exhibits 1 (Ga) and Ka.

5. In my opinion, Exhibits 1 and 1(Ka) cannot be taken into consideration. Small bits of land were sold by these two sale deeds in the vicinity at

the end of October 1956, about four months after the publication of the notification. It is a matter of common knowledge that as soon as a

notification is published for acquisition of land and especially a large area of land in a particular locality, prices of the lands in the vicinity abruptly

rise. Moreover, with reference to the map (Exhibit 6) it was shown to us that the lands which were the subject matters of transaction under Exhibits

1 and 1 (Ka) were very near the office of the Accountant General, Bihar and Lords Convent School, and were on the main road running through

that area. A portion of the land in question, measuring about 14 acres, is undoubtedly also on the main road, but the whole of the area is not on the

main road and Exhibits. 1 and 1(Ka) cannot form the basis of any calculation to fix up the value of the lands acquired.

6. The proceedings of Land Acquisition Case No. 1 R.S. of 1953-54 Ext. 13 shows that the notification u/s 4 in that case had been issued

sometime in the year 1950. A preliminary estimate was prepared in December 1951 and the value of the land was calculated at Rs. 28,435/- per

acre or Rs. 470/- per Katha as the adjoining lands were found to have been sold at different rates varying from Rs. 488/-, Rs. 450/- and Rs. 475/-

per katha during 1948, 1949 and 1950. Learned Additional. Government Pleader asked us to leave this document out of consideration on the

ground that Madhusudan Ghosh (A. W, 2), who had deposed for the appellants, had said in his cross-examination that in 1947 many refugees had

come to Ranchi from West Pakistan. Counsel, therefore, submitted that that was the reason that price of land in Ranchi had gone high in the years

1948 and 1949 with reference to which the price of Rs. 470/- was fixed in Exhibit 13. I am unable to accept this contention. The witness was not

further asked, or he did not state, as to whether many refugees from West Pakistan had purchased any land in the area from which the lands of the

appellants were acquired. That being so, it is difficult to conjecture that the prices in 1948 or 1949 or even in 1950, of the lands in the locality were

higher than those in the year 1956. ""Moreover, it has been pointed out by the learned Additional Judicial Commissioner that even on account of the

rush of the refugees to Ranchi in or about the year 1947, few transactions of settlement or sale of land had taken place and such transactions were

almost nil after the year 1949.

7. With reference to the sale deeds, Exhibits 1(Ga) and Ka, argument on behalf of the appellants was that the lands covered by the said deeds

were off the main road and near them was a set of three latrines in the compound of the office of the Accountant General and that is the reason that

the lands were acquired at a low rate of Rs. 325/- per katha under Exhibits 1(Ga) and Ka. I am not impressed by this argument. Although the

lands are a bit off from the main road, the sale deeds indicate, as has been noticed by the Court below in the chart of various exhibits mentioned in

the judgment, that there are roads on the sides of the lands sold by these documents. The latrines, at the time of local inspection by the learned

Additional Judicial Commissioner, were found at a distance of 22 ft. and that too across the road. It is not known whether these latrines were in

existence in the year 1955 when the documents were executed. I think, these two documents have been rightly relied upon by the Court below

along with Exhibit 13 for finding out the average rate of sale prevalent in the locality in the year 1956, when the notification u/s 4 was published. I

may note here that the Court below has referred to the date of the notification, i.e., the 30th May, 1956, as the relevant date for determining the

market value of the land, but the relevant date, properly speaking, would be the 4th July, 1956, when the notification was published in the Bihar

Gazette. But that difference of time is of no consequence in this case.

8. On behalf of the appellants we were asked to take into consideration Exhibits 5(Ka) and 8. The former is a matter from the Superintendent of

Central Excise, Ranchi, to the Land Acquisition Officer, Ranchi, dated the 13th January, 1956, intimating that the Excise Department proposed to

buy land, 1.25 acres approximately, situated at the back of the office of the Accountant General, Bihar, in Doranda (Ranchi). The landlord's

demand was Rs. 29,150/- per acre and the Superintendent asked the Land Acquisition Officer to make the assessment. Upon this, the Kanungo's

report (Exhibit 8), dated the 18th January, 1956, was submitted stating therein that the land required may be purchased at the rate of Rs. 28,435/-

per acre. This will roughly work up to Rs. 470/- per katha. I do not think that in absence of the evidence of the Kanungo who made the report

(Exhibit 8), and who has not been examined in this case, as also in absence of any other evidence to show that actually the land had been acquired

or purchased by the Central Excise Department at the said rate in January 1956 or near about that, it is possible to hold that the report of the

Kanungo is an admissible or reliable piece of evidence on the question of rate of sale of land in the locality in the first half of 1956.

9. I, therefore, hold in concurrence with the finding of the Court below, on the basis of Exhibits 13, 1 (Ga) and Ka, that the average rate of sale of

land in the locality was Rs. 397.40 P. per katha at the time the notification u/s 4 of the Act was published.

10. The learned Additional Judicial Commissioner, following the principles decided by a Bench of the Bombay High Court in Bombay

Improvement Trust Vs. Mervanji Manekji Mistry, has made a reduction of forty per cent of the rate determined and has held that it would be fit

and proper to fix the market value of the lands at sixty per cent of the rate of Rs. 397.40 P. per katha. Principles for valuing the land in a given

case cannot be of universal application. They are bound to vary from case to case. In the Bombay case the lands acquired were in the business

locality. It is a matter of common experience that the value of the land abutting on the road, and especially the main road, is very much higher in a

business locality than the value of the land in the rear side of it. But that is not the case in a residential locality as has been noticed by the learned

Additional Judicial Commissioner himself. From one point of view, even in a residential locality, lands abutting on the main road have got a higher

value but, from another point of view, people like to have residential quarters a bit off from the main road. And that is the reason that the value of

the two types of plot, one, on the road and the other a bit off from the road, does not appreciably vary. If private roads are constructed in the

bigger plot on either side of which small plots are carved out fit for construction of building for residential purposes, the whole area becomes fit for

habitation. Of course, if it were possible to make any precise and accurately mathematical calculation, one has to take into consideration that in this

part of the country plots on which houses facing east will be constructed will be more valuable than those over which houses facing west only can

be constructed. But such precisely mathematical calculation is not possible or practicable and an overall picture on some amount of guess work,

though on some reasonable basis, has got to be taken. The learned Additional Judicial Commissioner has merely referred to the fact that a

considerable portion of the land will be utilised in making roads, drains, service lanes etc. and that a lot of money will have to be spent in effecting

the plan to make the locality fit for construction of various houses for residential purposes. But he has not entered into any further discussion of the

fact as to what possible amount of land will be utilised in construction of roads, drains, service lanes, etc., and, on that account, what, reasonably,

the reduction in the price should be. It is, no doubt, true that when a big plot of land measuring 14 to 15 acres, as is the case here, will be sold or

purchased, naturally, the price will not be at par with the sale rates of small bits of land. Some reduction on that account also would be there. I,

however, feel that the reduction of forty per cent in the market value determined by the Court below is very high and is not based upon reasonable

calculations or considerations.

11. During the course of argument in this Court, a sketch map was shown to us by the learned Advocate for the appellants, showing therein four

roads each 20 ft. wide running north to south and one small road running east to west in between some plots which had no easy access to the main

road. Drains 3 ft. wide were also shown around the roads. Two service lanes were shown each 5 ft. wide. Calculating on that basis, it was shown

to our satisfaction that the lands lost in construction of roads, drains and service lanes will not exceed in any event twelve per cent of the total land

acquired. The cost of construction of roads and lanes (again it is a matter of common experience) is on many occasions borne by the residents of

the locality who construct their houses in such locality; or if it is borne by the owner of the land who proceeds to sell them by small plots, the price

of such plots goes on increasing as and when people rush to acquire such plots for construction of houses for residential purposes. Still some

reduction has got to be made on the principle of law laid down by the Bombay High Court in the case referred to above in that the price of

acquisition of a larger area must in the nature of things be lower than the price which is paid for acquisition of smaller areas. Taking into

consideration, therefore, all the facts and circumstances of the case as also the two facts mentioned in the judgment of the Court below to which

our attention was pointedly drawn by the learned Additional Government Pleader that the slope of the land is from south to north and a small

portion of it is lower in level, I think, an overall reduction of twenty per cent in the price will be quite fair and justifiable. I would, therefore, modify

the judgment and award of the learned Additional Judicial Commissioner to this extent that the appellants would get the price for their lands at

eighty per cent of the rate fixed. i.e., Rs. 397.40 P. per katha.

12. The learned Additional Judicial Commissioner has made a further reduction of twenty five per cent for rayati lands on account of the fact that

the tenants under the Chotanagpur Tenancy Act had no right to sell their raiyati lands except under certain circumstances. But such a reduction

becomes unjustified now in view of the majority decision of the full Bench of this Court in Ramdayal Sahu v. Hari Shanker Lal Sahu 1967 B.L.J.R.

78 where it has been laid down that a non-aboriginal raiyat of Chotanagpur has got unfettered right to dispose of his raiyati land. The learned

Additional Government pleader submitted that this law was declared in the year 1966 but the law known in 1956 was not so. I do not think there

is any substance in the argument, because the law declared by this Court will be deemed to be the law which prevailed in the year 1956 also. If the

appellants would have sold their raiyati lands in the year 1956, the sale could not be attacked as invalid in view of the law declared by the Full

Bench. I, therefore, think that a further reduction of twenty five per cent in the price of the raiyati lands is unjustified and to that extent also the

judgment of the Court below is modified. In other words, the appellants are entitled to get compensation for their entire 14.55 acres of land at the

average rate of eighty per cent of Rs. 397.40 P per standard katha prevalent in Ranchi. We have been informed at the Bar that roughly speaking

60.05 kathas make one acre.

13. The award of the Court below in other respects is affirmed as it was not attacked in the appeal by either side on any other ground. The only

modification made is in regard to the rate of land as indicated above. The appellants will get their additional compensation of fifteen per cent over

the total amount which will work out at the rate as modified by me. Consequently, the interest of six per cent awarded by the Court below on the

balance of the amount will be on the enhanced sum in view of the modification of the rate by me.

14. In the result, the appeal is allowed in part to the extent indicated above with proportionate costs and the award of the Court below is modified

to that extent.

B.P. Sinha, J.

15. I agree.