

Mahabir Prasad Santuka and Others

Vs

Collector, Cuttack and Others

Civil Appeal No. 696 of 1973

(K. N. Singh, A. P. Sen JJ)

11.02.1987

JUDGMENT

SINGH, J. -

1. This appeal on certificate under Article 133(1) (a) of the Constitution is directed against the judgment and order of the High Court of Orissa at Cuttack setting aside the order of the Sub-ordinate Judge, Cuttack and reducing the amount of compensation awarded to the appellants.
2. The appellants are owners of plots in dispute which include plot Nos. 177/16, 177/16-A, 177/17 and 177/17-A and situate in Village Jagbhairab having an area of about 12 acres. A notification under Section 4 of the Land Acquisition Act, 1894 was issued on February 2, 1967 and in pursuance there of the appellants land along with other land was acquired by the government for the purpose of construction of Aviation Research Centre at Charbatiya. The Collector awarded compensation to the appellants at the rate of Rs. 2000 per acre. On a reference made at the instance of the appellants the Sub-ordinate Judge, Cuttack awarded compensation at the rate of Rs. 15,000 per acre. On appeal by the respondents, the High Court modified the order of the Subordinate Judge and directed that the appellants be paid compensation at the rate of Rs. 7500 per acre. Aggrieved, the appellants have preferred this appeal after obtaining certificate from the High Court.
3. Learned counsel for the appellants urged that the High Court was not justified in reducing the compensation awarded by the Sub-ordinate Judge, as there was ample evidence on record to show that the market value of the land was much more than determined by the High Court and developmental activities had taken place near the land as a result of which the value of the land had appreciated tremendously. The learned counsel brought to our notice a number of judgments of the High Court where compensation for adjacent land acquired by the same notification was determined at the rate of Rs. 15,000 per acre. In those cases Advocate General appearing on behalf of the respondents before the High Court had conceded that the claimants were entitled to compensation at the rate of Rs. 15,000 per acre in the area in question. Learned counsel further urged that the appellants' land as well as the land of other claimants who have been awarded compensation at the rate of Rs. 15,000 per acre by the High Court are adjacent and there was no valid ground to award compensation to the appellants at a reduced rate.
4. We have been taken though the judgment under appeal and other judgments of the High Court and the evidence on record. After hearing counsel for the parties and having perused the records we find merit in the appellants submission. It is well settled that the owner of the acquired land is entitled to compensation on the basis of its market value. Section 23 of the Act lays down principles for determining compensation according to which the owner is entitled to receive market value of

the land. Market value means what a willing purchaser would pay to a willing seller for the property having regard to the advantages available to the land and the development activities which may be going on in the vicinity and the potentiality of the land. On the evidence on record it is apparent that the land in dispute is adjacent to the industrial area of Charbatiya where a large number of factories including Orissa Textile Mills, Kalinga Tubes Ltd., and a number of other factories are situate. The evidence on record further indicates that even though the land was being used for agriculture purposes but it was fit for non -agricultural purposes and it had potentiality for future use as factory or building site. The learned Subordinate Judge on perusal of the oral and documentary evidence on record determined the market value of the land at the rate of Rs. 15,000 per acre. The High Court held that since the State Government had been offering land situate in the adjacent Industrial Area to the industrialists at the rate of Rs. 7500 per acre, the appellants were entitled to compensation at that rate. In our opinion the High Court committed error in taking that approach, as it had itself observed that the State Government had offered land to the industrialists to enable them to set up industries and the price of the land was offered to them at a concessional value with a view to induce them to set up factory. After making that observation High Court was not justified in determining the market value of the land at Rs. 7500 per acre, as the offer of land to industrial entrepreneurs at concessional rate could not reflect the market value of the land.

5. Market value means, the price which a purchaser is willing to pay for the similar land to a willing seller. An offer of sale of land to industrialists on concessional rate with a view to induce them to set up their industries in a particular area do not reflect the prevailing market value of the land. The industrialists who were offered the land at concessional rates are not the willing purchasers. The Highs Court committed error in proceeding on the assumption that the concessional rate offered by government to the industrialists indicated the market value of similar land.

6. The High Court further held that since the appellants had purchased the land at the rate of Rs. 100 per acre in the year 1956, they were not entitled, in any event, to compensation more than Rs. 7500 per acre; this view is untenable. There is evidence on record to show that the land which was purchased in the year 1956 had no potentiality at that stage, as industrial area had not developed near about the land. After the setting up of the industrial area of Charbatiya the price of the land situate in its vicinity had increased tremendously. It is a matter of common knowledge that price of land near the vicinity of industrial area is bound to rise. Admitted the appellants' land is situate near the industrial area, therefore its value had increased and the High Court committed error in ignoring this aspect by determining the compensation. Plot No. 177 is a big plot having various sub plots which are owned by different persons. The appellants are owners of plots Nos. 177/16, 177/16-A, 177/17 and 177/17-A. The land contained in other sub-plots Nos. 177/79, 177/10 and 177/7 was also acquired and the compensation in respect thereof was determined by High Court uniformly at the rate of Rs. 15,000 per acre. There are five judgments of the High Court on record in respect of various sub plots of plot No. 177. On a perusal of those judgments, it is evident the High Court has awarded compensation at the rate of Rs. 15,000 per acre for the land which is quite adjacent to the appellants' land. The High Court has observed in its judgment in First Appeal No. 173 of 1971 connected with First Appeal No. 174 of 1971, Collector, Cuttack v. Karnakar Mohanty, decided on October 21, 1975, that the Advocate General appearing on behalf of the State conceded that in view of the decision of the High Court in respect of the similar land in the vicinity it was not possible on his part to question the valuation of the acquired land as fixed by the Subordinate Judge at the rate of Rs. 15,000 per acre. In that case Plot No. 177/13 was the subject matter of the acquisition. We have also pursued a copy of the map which is on record. We find that the appellants land is quite adjacent to those plots which were the subject matter of the decision in the appeals decided by the High Court where compensation has been awarded at the rate of Rs. 15,000 per acre. In the

circumstances there is no valid reason to award compensation to the appellant at a reduced rate specially so when the respondents have failed to point out any material difference in the situation, topography, lay out of the appellants land with that of the adjacent land in respect of which compensation has been awarded at the rate of Rs. 15,000 per acre. If the impugned order of the High Court under appeal is upheld an anomalous position would arise inasmuch as the appellants will be denied that amount of compensation which has been awarded to other claimants in respect of similar adjacent land. We are therefore of the opinion that the High Court committed error in interfering with the order of the subordinate Judge and in determining the compensation at the rate of Rs. 7500 per acre. We hold that the appellants are entitled to compensation at the rate of Rs. 15,000 per acre as determined by the learned subordinate Judge.

7. The High Court has awarded solatium at the rate of 15 per cent in consideration of compulsory nature of acquisition and it has further awarded interest at the rate of 6 per cent per annum from the date of taking over the possession till the date of deposit of amount of compensation. Learned counsel for the appellants urged that in view of the amendment made in Section 23 and 28 of the Act by the Amending act of 1984 appellants were entitled to solatium at the rate of 30 per cent of the compensation and they are further entitled to interest at the rate of 9 per cent per annum. He placed reliance on the decision of this court in Bhag Singh v. Union Territory of Chandigarh (1985 Supp 2 SCR 949 : (1985) 3 SCC 737 : AIR 1985 SC 1576 : 1985 MPLJ 523) where it was held that in view of Section 30(2) of the Amending Act the amended section 23(2) which provides for solatium at the rate of 30 per cent is applicable to all pending proceedings whether they may be pending before the collector, court, High Court or the Supreme Court. We are informed that this question has been referred to a larger bench and a Constitution bench has heard argument and the judgment is reserved. In this view we refrain from expressing any opinion on the question. If and when judgment is delivered in the matter and if the appellants are found entitled to the increased amount of solatium and interest they would also be entitled to receive the same in accordance with law.

8. We accordingly allow the appeal, set aside the judgment and order of the High Court and direct that the appellants shall be paid compensation at the rate of Rs. 15,000 per acre. The appellants are entitled to their costs. The respondents are directed to pay the costs of the appeal to the appellant which we quantify Rs. 5000.

</html