

State of Orissa

Vs

Rajakishore Das

Civil Appeal No. 3525 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

05.02.1996

JUDGMENT

1. Leave granted.

2. Though the respondent has been served, he does not appear either in person or through counsel. This appeal by special leave arises from the order dated 1-3-1990 made by the High Court of Orissa in First Appeal No. 252/87*.

*Reported in (1990) 2 Civ LJ 67 (Orissa)

3. The notification under Section 4(1) of the Land Acquisition Act, 1894 was published in the Gazette on 25-3-1985 acquiring about 120 decimals of land for extension of Vidyut Marg in Bhubaneswar Municipality. The Land Acquisition Officer passed his award under Section 11 on 7-10-1985 awarding total compensation of a sum of Rs. 1 lakh. Dissatisfied therewith, the respondent sought for reference and also demanded Rs. 2 lakhs for the building constructed thereon. The reference Court by judgment and decree dated 19-8-1987 awarded compensation @ Rs. 1,66,000/- per acre other statutory benefits. On further appeal, the High Court enhanced the compensation in respect of the building from Rs. 10,000/- to Rs. 1 lakh. Feeling aggrieved with the enhanced compensation in respect of the building, this appeal by Special leave has been filed.

4. The Division Bench has recorded the finding that though a sale was purported to have been made of the half constructed building on March 30, 1981 for residential purpose, the sanction for the construction of the building from the Municipality was not obtained. The construction was unauthorised, Nonetheless, the High Court directed the payment of compensation. We find that the approach of the High Court is clearly illegal. Having recorded the finding that the respondent had constructed the building without permission of any authority and since the Government is entitled to have the unauthorised construction demolished, unless the owner himself voluntarily demolishes and takes the value of the building structure as salvage material, the High Court ought to have held that the respondent had proceeded unauthorisedly in constructing the building having had the knowledge of the acquisition. Therefore, the authorities are not bound by such construction. Consequently, the State is not bound to pay compensation of the value of such a building constructed unauthorisedly. The judgment and order passed by the High Court directing payment of compensation of Rs. 90,000/- is clearly illegal.

5. The appeal is accordingly allowed. The order of the reference Court for a sum of Rs. 10,000/- is upheld and the direction for payment of the balance amount stands set aside. No Costs. Order accordingly.