SUPREME COURT OF INDIA

Satyanarayana

Vs.

Bhu Arjan Adhikari

C.A.Nos.3322-3324 of 2011

(G. S. Singhvi and Asok Kumar Ganguly JJ.)

18.04.2011

ORDER

1. Leave granted.

2. These appeals are directed against judgment dated 16.6.2008 of the Division Bench of the Madhya Pradesh High Court whereby the appeals filed by the Appellants under Section 54 of the Land Acquisition Act, 1894 (for short "the Act") were dismissed and those filed by Respondent No. 2-Ujjain Development Authority (for short '"the UDA") were partly allowed and market value of acquired land fixed by IV Additional District Judge, Ujjain, (hereinafter described as the "Reference Court") was reduced from ` 2,35,357 to ` 1,56,905 per hectare.

3. In exercise of the power vested in it under Section 4 of the Act, the Government of Madhya Pradesh proposed the acquisition of 27.285 hectares land situated at village Nanakhedi, District Ujjan for Scheme No. 23 of the UDA. After publication of the declaration issued under Section 6 and complying with Section 9, the Land Acquisition Officer passed award dated 22.7.1988 whereby he fixed market value of the acquired land at the rate of ` 1,56,905 per hectare. On a reference made by the Collector under Section 18 of the Act, the Reference Court considered the evidence produced by the parties and held that the Appellants are entitled to higher compensation because the acquired land was irrigated land. The Reference Court directed the Respondents to pay compensation at the rate of ` 2,35,357 per hectare.

4. Both, the Appellants and the UDA challenged the award of the Reference Court by filing appeals under Section 54 of the Act. The Division Bench of the High

Court dismissed the appeals filed by the Appellants for award of higher compensation and allowed those filed by the UDA on the premise that no evidence had been produced by the claimants to prove that the acquired land was irrigated one. This is evident from paragraphs 23 and 24 of the impugned judgment, which are extracted below:

> 23. In the first place, there is absolutely no evidence to prove that land in question is an irrigated land. Secondly, no documentary evidence of any nature was adduced to prove this fact by the Respondent. Thirdly, oral evidence adduced is not acceptable for want of any corroborative piece of evidence. It was in our view a self creating evidence adduced just for the sake of adducing. Fourthly, even assuming that it is an irrigated land (though it is not) even then there is no basis for giving increase by 1 and 1/2 times more than what is determined by LAO. Fifthly, no law provides or/and recognize such kind of increase being given to such type of lands. If, 1 and V% times in this case then it could be even more. It is in our opinion totally base less and not supported by any law. Sixthly, in a case of this type of acquisition where all lands are acquired by one notification then compensation should be determined uniformly to all lands unless there are very special features and lastly, the LAO had determined ` 1,56,905/- per Hect. uniformly to all kinds of lands without making any distinction as such between irrigated and nor irrigated and hence, there was no occasion for the reference Court to hold that rate determined by LAO was in relation to unirrigated land and not for irrigated. In other words when the LAO did not make any classification of land while determining the rate of compensation and treated all lands- uniformly then there was no basis for reference Court to hold that rate determined by LAO was in relation to unirrigated land and hence it could be enhanced by 1 and 1/2 times for other types of land.
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> 24. In our opinion, this was a case where landowner failed to prove any case for enhancement in the compensation than what was awarded by LAO. As held supra, the sale deeds filed and relied on by landowners were of no consequence or/and use because most of them were either subsequent to the date of acquisition and remaining were of a very small plots area. It was, thus, a clear case where no kind of evidence was tendered in support of enhancement much less for enhancement to the extent of ` 2,35,357/- per Hect. An attempt made by reference Court to enhance by giving such kind of mathematical calculation i.e. 1 and VI times more than the rate of LAO,

thus, cannot be upheld it being not in accordance with law nor is supportable by evidence.

5. Ms. Pragati Nikhara, learned Counsel for the Appellants, invited out attention to the award of the Reference Court to show that the Appellants had adduced cogent evidence to prove that they were irrigating their land through five wells constructed at a cost of ` 5,00,000/- Learned Counsel also referred to the statement of the Patwari of the UDA, Shri Nandram to show that the Appellants had five wells. Dr. A.K. Chitale, learned senior counsel appearing for the UDA, fairly stated that the evidence produced by the Appellants did show that the acquired land had irrigation facility, but submitted that the matter may be remitted to the Reference Court for fresh determination of market value of the acquired land because analysis of the evidence by the Reference Court was also not satisfactory.

6. In response to the suggestion made by Dr. Chitale, learned Counsel for the Appellants submitted that if the Court is inclined to remand the case to the Reference Court then the parties may be given permission to lead additional evidence. We have considered the respective submissions and scrutinized the record. The observations made by the High Court in paragraphs 23 and 24 in the impugned judgment that there is absolutely no evidence to prove that the acquired land is irrigated land is ex facie erroneous. In the award passed by it, the Reference Court referred to the evidence produced by the parties and observed as under:

> In this connection, in para 4 of the statement PW1 applicant Shivnarain has deposed that his acquired land happened to be fully irrigated land. The said statement made on oath has not been put under any challenge in the cross-examination witness on behalf of the cross-examination, in such situation, there exists no any reason for holding the said made by applicant witness Shivnarain is in examination-in-chief as false. Defendant witness DW - 3 Patwari Nandram, has admitted this much that there exists five wells in the land of applicants under acquirement, but has deposed he does not know as to how much land was irrigated and how much is non-irrigated. Thus, even Defendant witness DW-3 Patwari Nandram has not rebutted this statement made by the applicant PW - 2 Shivnarain in the evidence that land of applicants under acquirement happened to be irrigated land. Existence of 5 wells in the land of applicants also reveals that land of the applicants happens to be irrigated land.

7. It appears that attention of the Division Bench of the High Court was not invited to the evidence produced by the Appellants before the Reference Court and statement of the Patwari of the UDA else there was no justification for the observation that the Appellants had not produced any evidence to prove that the land was being irrigated.

8. We may have remitted the case to the High Court but with a view to give opportunity to the parties to produce additional evidence in support of their respective cases, we deem it proper to remand the case to the Reference Court for fresh determination of market value of the acquired land. In the result, the appeals are allowed. The impugned judgment is set aside and the case remanded to the Reference Court for re-determination of market value of the acquired land. The Reference Court shall give opportunity to the parties to produce additional evidence (oral or documentary) and pass fresh award within a period of six months from the date of receipt/production of this judgment.