

# ORISSA HIGH COURT

State (Orissa)

Vs

Dunda Oram

A.H.O. Nos. 74, 75 and 76 of 1975

(R.N. Misra and N.K. Das, JJ.)

10.08.1977

## JUDGEMENT

**N.K. Das, J.**

1. In close proximity to the Rourkela Steel Plant and the Fertiliser Factory where an industrial complex is growing up, A.34.38 dec. of land were acquired by notification under Section 4 (1) of the Land Acquisition Act of 1894 dated 13-5-1969. There is no dispute that the acquisition is also for industrial and building purposes. The Land Acquisition Officer awarded compensation of Rupees 69,306.46. The respondents asked for references under Section 18 of the Act and in the three references the learned Subordinate Judge of Sundargarh enhanced the compensation amount to Rs. 9,75,240 inclusive of 15% of statutory compensation and 25% for potential value of the land upon determining the market value at the rate of Rs. 200 per decimal. As against this decision, the State of Orissa preferred three appeals to this Court which were analogously heard by our learned brother S. K. Ray, J. and were dismissed. These three Letters Patent Appeals against the common decision of the learned single Judge have been heard analogously and are being disposed of by this judgment.

As it appears from para 3 of the judgment of the learned single Judge, two points only were raised by the State Government, namely, (a) the addition of 25% to the estimated market value as potential value of the acquired land was illegal as that amount had already been taken into account in the fixation of the market value of the land and could not be assessed again and separately; and (b) since the sale deeds produced on behalf of the claimants were in respect of small parcels of land, they could not provide the requisite guideline for assessment of market value of extensive areas as acquired in the case. Both the points were negatived by our learned brother and the decision of the learned Subordinate Judge was confirmed.

2. The learned Advocate-General contends that determination of value of the lands suffers from error of record and the learned single Judge has omitted to consider the fact that the sale deeds produced by the claimants were in respect of small parcels of land. There is no evidence as to the distance and relative locations of the lands acquired and the lands covered by the sale deeds produced by the claimants. There is also no evidence about similarity of the lands acquired and the lands covered by the sale deeds produced by the claimants. There is absence of evidence of

growth of industries in the locality and no reliance can be placed on Exts. 1, 2, 3 and 5 which are sale deeds produced by the claimants.

3. The claim under reference was at the rate of Rs. 30,000 per acre. The Court has allowed compensation at the rate of Rs. 20,000 per acre. The learned single Judge has held that the materials available on record give a picture that there is gradual appreciation of market value of the land in the locality and even before the date of acquisition, various industries had sprung up all round the acquired lands and Government have in fact started selling land in the vicinity of the acquired lands at a very high rate i.e. Rs. 95,000 per acre. It has also been held that the existing advantages of the acquired lands were great and their future possibilities and potentialities were equally high. In view of the increasing growth of the various factories and offices there was great possibility of the acquired lands being used for building purpose and even for setting up of factories. The learned single Judge has observed that so long as Rourkela Steel Plant has come to stay, the uncertainties of future possibilities have almost disappeared and in such a case where instances of price paid within a reasonable time of the date of acquisition in *bona fide* transaction of purchase of land adjacent to the lands acquired and possessing similar advantages are wanting, instances of sale of small parcels of land within 4 to 5 years prior to the date of acquisition with all evidence of general and gradual appreciation of market value of land with all existing advantages and future possibilities having regard to their location and the development of the immediate vicinity of the acquired lands may be used as a substantial guide to determine the value. Reliance has also been placed on some decisions of the Supreme Court as well as of this Court. It is well settled that in a case of acquisition of land market value is generally ascertained on a consideration of the prices obtained by sale of adjacent lands with similar advantages. Where there are no sales of comparable lands, the value must be found in some other way. One method is to take the annual income which the owner is expected to obtain from the land and to capitalise it by a number of years of purchase. The capitalised value is then taken as the market value which willing vendor might reasonably expect to obtain from a willing purchaser. In some special cases valuation has been made on the basis of the reinstatement value which is assessed according to the cost of acquiring an equally convenient land or premises. The proposition that the market value is to be determined by reference to the price which a seller might reasonably expect to obtain from a willing purchaser may not be possible in some cases to ascertain with any amount of precision and in those cases the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard. The land acquired has, therefore, to be valued not only with reference to its condition at the time of the declaration under Section 4 of the Act, but its potential value also must be taken into account. The sale deeds of the lands situated in the vicinity and the comparable benefits and advantages which they have, furnish a rough and ready method of computing the market value. This, however, is not the only method. The other method of computing the market value is by capitalising the rent, which does not arise in this case. The Court is also not precluded from taking any other special circumstances into consideration, the requirement being always to arrive as near as possible at an estimate of the market value. The exact value is not always possible as no two lands may be the same either in respect of the situation or the extent or the potentiality nor is it possible in all cases to have reliable material from which that valuation can be accurately determined (See *State of Gujarat v. Vakhatsinghji Vajesinghji Venghela*<sup>1</sup>, and *Smt. Tribeni Devi v. Collector, Ranchi*<sup>2</sup>). Of course, for ascertaining the market value of a land on the date of notification considerations can be made as to opinion of experts, price paid within a reasonable time in *bona fide* transaction for purchase of the lands acquired and possessing similar

advantages and also actual or immediate prospective value of the land acquired. But the Court has to enter into some guesswork taking into consideration the future advantages and possibilities of better price and demand of the land in future. It has been held in *Narayana Gajapatiraju v. Revenue Divisional Officer, Visakhapatam*<sup>3</sup>, that sometimes it happens that the land to be valued possessed some unusual and it may be unique features, as regards its position or its potentialities. In such a case, the arbitrator in determining its value may not get any market value to guide him and he will have to ascertain as best he may from the materials before him, what a willing vendor might reasonably expect to obtain from a willing purchaser, for the land in that particular position and with those particular potentialities. The arbitrator has to take into consideration the uses to which the land is reasonably capable of being put in future.

4. Keeping in view the aforesaid dictum of the Supreme Court and the Privy Council, the value of the acquired property in its actual condition at the time of acquisition with all its then existing advantage including the realised possibilities has to be first estimated and to it should be added the possible enhancement of its value in future due to the future possibility of its use taking into account its peculiar location and both together constitute the market value on the date of the acquisition. The value of the property with all its existing advantages including realised possibilities leads to consideration of the general appreciation of the value of the land in the locality up to the date of acquisition. Places which are rapidly growing in importance due to the development, the value of the land also generally appreciates at a rapid rate year by year and therefore that general appreciation of value must be taken into consideration for making an estimation of the value of the acquired land in its actual condition at the time of acquisition with all its then existing advantages including the realised possibilities. Potential value of the land is related to the future possibilities to which the acquired land may be put in the future taking into account its location, development of the immediate vicinity of the acquired land and other possible advantages of the acquired land itself. In cases reported in *Kasinath Mukherji v. Collector of Puri*<sup>4</sup>, and *Mt. Khuduna Bibi v. State of Orissa*<sup>5</sup>, 50% has been added on account of general appreciation of prices in Bhubaneswar and Rourkela respectively (the present case relates to acquisition of land in Rourkela) to estimate the value of the acquired property on the date of its acquisition with all its then existing advantages including realised possibilities. An addition of 25% has been made on account of its potential value for future possibilities. It would thus be seen that the general appreciation of prices in expanding urban and industrial areas up to the date of acquisition has nothing to do with the potential value of the land which is to be estimated on account of future possibility to which the particular land may be put in future. In AIR 1972 Supreme Court 1417, referred to above, the future possibilities of the particular acquired land had been taken into account for arriving at an estimate of the value of the land on the date of acquisition with its existing advantages. In spite of having taken potential value into consideration, 10% towards potential value was also added in the decision of this Court referred to above.

5. The claimants in the present cases have proved four sale deeds - Ext. 1 dated 21-2-64 under which 18= dec. of land has been sold for Rs. 2,100, Ext. 2 dated 1-8-64 under which 36 dec. of land has been sold for Rs. 3,700, Ext. 3 dated 11-8-65 under which 34 dec. of land has been sold for Rs. 4,000 and Ext. 5 dated 29-7-66 under which 2 dec. of land has been sold for Rs. 400. These transactions are between 21-2-64 and 29-7-66, i.e. 3 to 4 years prior to the date of acquisition. Undoubtedly, all these sale deeds relate to small parcels of land. Examination of these sale deeds would show that the market value of land during that period was near about Rs.

130 per decimal. If these documents are considered along with other materials on record, it would appear that there are adequate materials to prove that places near about the acquired lands are rapidly growing in importance due to development of the Rourkela Steel Plant. O.P.W. 1 who has been examined on behalf of the State Government, has admitted that small industries have cropped up for the last three years and many buildings have come up in the locality. It also appears from the evidence of P. Ws. 1 and 2 that the lands are included within the master plan of the town and the Fertiliser Plant is situated near the lands in question. The Auto India Factory and Rolling Mill are situated in the vicinity. From the testimony of P. Ws. 4, 5 and 7, it is also evident that many factories like Fertiliser and Saw Mill and many other such industries have cropped up in the locality and houses and offices of Konark Industries (Rolling Mill) have been completed and only machineries are to be installed and these are adjoining the lands acquired. In addition to the aforesaid evidence, P. W. 6 has categorically stated that in that area Government has sold lands at the rate of Rs. 95,000 per acre in 1969 in his presence. These lands were being sold at the rate of Rs. 200 to Rs. 900 per acre in 1955-56. This fact has not been denied by Government. The learned Advocate-General contends that there is no evidence as to the vicinity of the purchased lands under the sale deeds and the acquired lands and also the lands under the sale deeds being small parcels, cannot be considered as the criteria for fixation of the market value of the lands acquired. From the materials on record, we find there is evidence that the lands purchased under the sale deeds are in close proximity to the lands acquired. True it is that price of small pieces of land cannot be utilised for calculating the market value of large extent of lands. But as we have already pointed out there are other factors for consideration in view of the situation of the lands and their future prospects. In other words, the advantageous position of the land and the future prospects clearly indicate that a willing buyer is to get more price than the price mentioned in the sale deeds. The potential value and the advantages of the particular acquired land are to be taken into account for estimating the value of the land in the entire master plan area of Rourkela township on the date of acquisition along with appreciation of value from 1964 to 1966 to the date of acquisition, which represents the value of the acquired land with all its existing advantages and realized possibilities on the date of acquisition. The learned single Judge has taken into consideration the evidence of growth of industries all round the acquired lands by the date of acquisition for the purpose of estimating the potential value of the acquired lands and has, therefore, confirmed the decision of the learned Subordinate Judge adding 25% to the value. There is ample evidence on record that even before the date of acquisition and near about the time various industries had sprung up all round the acquired lands and Government was selling lands in the vicinity in the year of notification at the rate of Rs. 95,000 per acre. The price in the instant case has been fixed by Court at the rate of only Rs. 20,000 per acre. Therefore, the value of the lands on the date of acquisition on account of existing advantages was rightly held on a modest estimation to be Rs. 200 per dec. and potential value at the rate of 25% has also been added taking into account the future possibilities of the acquired lands. In case of acquisition of land in Rourkela, it has also been held in (1968) 34 Cut LT 1043 that after 1953 Rourkela Steel Plant was established and as a result thereof Rourkela has become a highly industrial area and has assumed considerable commercial importance and consequently price of land has gone up. The Steel Plant started working in 1956 and these circumstances definitely contributed to increase in the price of land in or around Rourkela. These factors should not be lost sight of. Simply because the lands covered under the sale deeds are small pieces of land, it cannot be said that the sale deeds cannot be utilized to determine the value of the lands acquired. The lands are substantial in extent and are situated in a highly developing commercial area. After going through the materials available on record, we agree with the finding of the learned single

Judge that there is gradual appreciation of market value of land in the locality since 1954 and that the existing advantages of the acquired lands are great and their future possibilities and potentiality were also equally high. We also agree with the finding of the learned single Judge that so long as Rourkela Steel Plant has come to stay, the uncertainty of future possibilities has also disappeared. In the case reported in (1968) 34 Cut LT 1043, 25% was added to the value of the lands acquired in Rourkela area due to the fact that the lands assumed considerable commercial importance and price of lands had considerably appreciated. On the aforesaid analysis, we do not find any intrinsic infirmity or any unreasonable consideration by the learned single Judge in upholding the decision of the learned Subordinate Judge.

6. It is contended by the learned Advocate-General that no addition on account of potential value should have been made as it is an integral element of market value. Reliance has been placed on AIR 1972 Supreme Court 1417 (supra). In that case, there was no evidence of any future potentiality of the acquired lands. After having taken judicial notice of the general rise in land values after the II World War on which account market value was enhanced by 5% it was held that in that particular case whatever potentiality the land had, had already been taken into consideration and should not be assessed and added separately. In the present case, apart from general appreciation of prices, there is ample evidence, as we have already held, that even before the acquisition and also near about that time various industries had sprung up all round the acquired lands and Government was also selling lands in the vicinity at the rate of Rs. 95,000 per acre. Therefore, addition of 25% of potential value is justified. Reliance has also been placed by the appellant on *Gopal Das v. Collector of Varanasi*<sup>6</sup>, The facts and circumstances of that case are different. In that case no cogent material was brought on record to show that there had been any increase in the value of the land subsequent to its purchase by the claimant in 1945 till the date of acquisition in 1947. But in the present case, the general appreciation of prices of land in Rourkela township and Rourkela town in Orissa due to industrial and commercial growth is evident as has been held by this Court in a previous land acquisition in Rourkela as reported in (1968) 34 Cut LT 1043 and judicial notice of general appreciation of land value is also supported by the decision reported in AIR 1972 Supreme Court 1417. Therefore, the contentions raised by the learned Advocate-General have no force.

7. In the result, there is no merit in the appeals. All the appeals are accordingly dismissed with costs. Consolidated hearing fee is assessed at Rs. 250.

**R. N. Misra, J.**

7. I agree.

Appeals dismissed.

Cases Referred.

<sup>1</sup> AIR 1968 SC 1481

<sup>2</sup> AIR 1972 SC 1417

<sup>3</sup> AIR 1939 PC 98

<sup>4</sup> AIR 1962 Ori 21

<sup>5</sup>(1968) 34 Cut LT 1043

<sup>6</sup>AIR 1977 SC 901