

[2013] 8 S.C.R. 312

A

AHSANUL HODA

v.

STATE OF BIHAR

(Civil Appeal No.5311 of 2012)

JULY 1, 2013

B

**[G.S. SINGHVI AND SUDHANSU JYOTI
MUKHOPADHAYA, JJ.]**

- Land Acquisition Act, 1894 – Acquisition of land – Compensation – High Court reduced compensation awarded to claimant-appellant, by fixing lower market rate of the land and set aside the part of the order passed by the Reference Court granting Rs.10,000/- towards damages of standing crops– Justification – Held: On facts, not justified – Determination of market value by High Court was not based on any evidence but on mere presumption and surmises – High Court set aside compensation towards damages of standing crops by wrongly placing reliance on the statement of an Officer of the State (OP-W-1), who was posted elsewhere at the time of acquisition of the land – Order passed by the High Court set aside and the award passed by the Reference Court restored.*

E

- The High Court, vide the impugned order, reduced the compensation awarded to the claimant-appellant, by fixing lower market rate of the land and set aside the part of the order passed by the Reference Court granting Rs.10,000/- towards damages of standing crops.**

F

- The appellant challenged the judgment passed by the High Court on the grounds: (i) determination of market value was not based on any evidence but on mere presumption and surmises; and (ii) that the High Court wrongly relied on the statement of OP-W-1, who was posted elsewhere at the time of acquisition of the land.**

G

H

Allowing the appeal, the Court

A

HELD: 1. This Court in number of cases has taken judicial notice of the fact that there is a steady increase in the market value of the land and has also adopted the procedure for determining the increased market value and relied upon the transaction at a given rate per year. [Para 16] [319-C]

B

General Manager, Oil and Natural Gas Corporation Limited vs. Rameshbhai Jilvanbhai Patel and Another (2008) 14 SCC 745: 2008 (11) SCR 927; Sardar Joginder Singh vs. State of Uttar Pradesh and Another (2008) 17 SCC 133 – relied on

C

2. Mere reliance made by a Court on sale deeds of smaller residential area for determination of market value of larger agricultural area will not render the determination illegal until and unless it is shown that the determination was not proper. [Para 19] [320-D-E]

D

Haridwar Development Authority vs. Raghubir singh and Others (2010)11 SCC 581: 2010 (2) SCR 201 – relied on.

E

3. In the instant case, as the sale-deeds relied upon by the Reference Court (Ext.1 and Ext.1/b) were in relation to smaller plots, deduction of 37% was made by the Reference Court and thereafter, by allowing appropriate 10% increase in the value of the land from the date of the sale deeds upto the date of Notification under Section 4 of the Act, the Reference Court arrived at a figure of Rs.250/- per decimal. The High Court while arriving at figure of Rs. 100/- per decimal considered only the fact that the sale deeds relied upon were in relation to smaller plots and those sale deeds(Ext.1 and Ext.1/b) were related to homestead land and hence fixed Rs. 10,000/- per acre as compensation. It completely failed to consider the increase in price of land and the deduction

F

G

H

A made by the High Court is nearly 75% which is not in accordance with law. As Ext.1 and Ext.1/b which were related to smaller area, were the only sale deeds available for comparison, the same were relied upon by the Reference Court, but the High Court erred completely in disregarding the said sale-deeds and thus arrived at a finding of Rs.100/- per decimal as market value on mere presumption and surmises. The High Court also committed error in holding that the sale deeds (Ext.1 and Ext.1/b) relate to homestead land. No citation was found in Ext.1 showing the land as homestead land. On the other hand Ext.1/b specifically cites that the land is an agricultural land for which the annual revenue rent of Rs.25 is payable. [Paras 20, 21] [320-F-H; 321-A-B, D-E]

D 4. The High Court disregarded the evidence adduced by the claimants in its entirety without any reason; however, it relied on evidence of an officer of the State (OP-W-1) and set aside the compensation in relation to the standing crops. The Reference Court has clearly recorded in its order that the said State Officer was not posted in that area at the time of acquisition and his knowledge was limited to the official record. The fact that the Collector had not allowed any amount towards damage of standing crops and that no such amount is mentioned in the Khatiyā does not mean that no standing crop was there at the time of taking possession of the land. On the contrary, the witnesses AW-1 to AW-5 appeared and supported the statement of claimant that at the time of the possession, standing crops were there which were damaged causing loss to the extent of Rs.10,000 to Rs. 12,000/-. [Para 22] [321-E-G; 322-A]

5. In view of the finding as recorded above, the order passed by the High Court is set aside and the award passed by the Reference Court is restored. [Para 23] [322-B]

AHSANUL HODA v. STATE OF BIHAR

315

Case Law Reference:**2008 (11) SCR 927 relied on Para 17****(2008) 17 SCC 133 relied on Para 18****2010 (2) SCR 201 relied on Para 19**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5311 of 2012.

From the Judgment and Order dated 10.02.2011 of the High Court of Judicature at Patna in First Appeal No. 189 of 2005.

Gaurav Agrawal for the Appellant.

Manish Kumar for the Respondent.

The Judgment of the Court was delivered by:

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. This appeal has been filed by the claimant-appellant against the judgment and order of the Patna High Court dated 10.2.2011 by which the High Court reduced the compensation awarded to the claimant, by fixing the lower market rate of the land in question and set aside the part of the order passed by the Reference Court granting Rs.10,000/- towards damages of standing crops.

2. Certain lands in Mauja Mothabari, Thana Katoria, Pargana Sarohi, District Bhagalpur (now Banka) were acquired for the construction of the Orni-reservoir. Land measuring 3.54 acres of Khata No.111, Khasra No.2925 of same village belonging to the appellant was also acquired. The Collector by an award order dated 16.10.1984 fixed the compensation of Rs.6513.60 for the entire land based on market rate at Rs.16 per decimal. No amount was awarded towards damages of standing crops.

A 3. The Reference Court to which the claims of the land
owners for higher compensation were referred, determined the
market value as Rs. 250/- per decimal i.e. Rs. 25,000/- per
acre. The Reference Court based its decision on two sale
B 16.10.1975 (Ext.1 and Ext.1/b) relating to sale of plots in the
neighbouring area. Considering the fact that the sale deeds
were related to small extent of land of nearby village and the
acquisition was related to a larger extent, the Reference Court
was of the view that certain percentage could be deducted while
C determining the value of the land in question. However, as sale
deeds were of the earlier period, after such deduction,
appropriate increase in the value of the land from the date of
the sale deed to the date of the Notification under Section 4 of
the Land Acquisition Act, 1894 (hereinafter referred to as 'the
D Act') was made.

4. The respondent preferred an appeal before the High
Court. The High Court disposed of the said appeal by
impugned judgment dated 10.2.2011. The High Court modified
the judgment of the Reference Court with regard to the market
E value by reducing the market rate from Rs.250/- per decimal
to Rs.100/- per decimal and set aside the part of the order
whereby sum of Rs.10,000/- was granted by the Tribunal as
damages of standing crops.

F 5. During the pendency of the appeal before the High
Court and after 23 years of the acquisition, the appellant
received a sum of Rs. 5,69,531/- on 4.7.2007 as per
determination of the Reference Court and paid a sum of Rs
56,953/- towards tax. The effect of impugned judgment passed
G by the High Court is that the claimant has to refund part of the
amount received by the claimant as compensation.

6. The questions that arise for our consideration are:

(i) Whether the market value as fixed by the Tribunal
H is excessive as contended by the State of Bihar;

AHSANUL HODA v. STATE OF BIHAR 317
[SUDHANSU JYOTI MUKHOPADHAYA, J.]

- (ii) Whether the Tribunal rightly compensated the claimant for damages of standing crops. A

7. The High Court by its impugned judgment modified the compensation and set aside the part of the order relating to compensation for standing crops on three counts, namely; (a) The sale deeds dated 25.11.1980 (Ext.1) and 16.10.1975 (Ext.1/b) related to smaller area of 25 and 6 ½ decimals of land respectively; (b) Aforesaid sale deeds do not relate to agricultural land but homestead land as in the boundary of one of the sale-deed 'Masjid' and 'road' is shown; (c) OP-W-1, Shri Ratneshwar Pd. Singh has stated that there was no crop standing on the land at the time of the possession. B
C

8. Learned counsel for the appellant assailed the judgment passed by the High Court on the following grounds: D

(i) In the absence of any other evidence except the sale deeds (Ext.1 and Ext.1/b), the determination of market value is not based on any evidence but on mere presumption and surmises. E

(ii) The High Court wrongly relied on the statement of OP-W-1, Ratneshwar Pd. Singh, who was posted elsewhere at the time of acquisition of the land. On the other hand, the Reference Court decided the quantum of payment towards damages of standing crops on the basis of evidence on record. F

9. Learned counsel for the State justified the order passed by the High Court. It was contended that the compensation with regard to larger area cannot be determined on the basis of sale deeds related to smaller area. As the sale deeds at Ext.1 and Ext.1/b related to homestead land having shown 'road' or 'masjid' in the boundary, no comparison can be made with the agricultural land acquired for other purpose. G

10. Before the Reference Court claimant produced seven witnesses, AW-1 to AW-7 and three sale deeds, Ext.1, Ext.1/a H

A and Ext.1/b. On behalf of the State, one witness OP-W-1, Ratneshwar Pd. Singh, an assistant to the Land Acquisition Officer, Medium Irrigation Project, Bhagalpur and the two valuation Khatiyans, Ext. A and A/1 were produced.

B 11. AW-6, the claimant, himself in his deposition stated that 3.54 acres of his land acquired is 'three fasla' (produced three crops in an area) and was irrigated from the Orni river. At the time of taking possession by State, potato, wheat and sugar-cane were standing crops which were damaged causing a loss of Rs. 10,000/- to Rs.12,000/-. The market value of the land at the time of acquisition was between Rs. 50,000/- to Rs. 60,000/- per acre. Similar statements were made by other witnesses i.e. AW-1 to AW-5. They supported the claim of the claimant.

D 12. Kanhaiya Lall Ghosh, A.W.7, a deed writer proved sale deeds Ext. 1 dated 25.11.1980, Ext. 1/a dated 6.10.1980 and Ext.1/b dated 16.10.1975. He stated that he was the deed writer of Exts.1, 1/a and 1/b. By Ext.1/a, Bibi Rahana Sultana and others sold 70 decimals of land for consideration of Rs. 7,000/- on 6.10.1980. By Ext.1/b dated 16.10.1975, Seikh Janual and others sold 6 ½ decimals of land for consideration of Rs. 1500/- .

F 13. Ratneshwar Pd. Singh, OP-W-1 deposed before the Reference that the land of the appellant measuring 3.54 acres had been acquired by the State vide L.A. Case No. 76/81-82 and department paid Rs. 5664/- towards value of the land and Rs. 849.60 as additional compensation; a sum of Rs. 6513.60 in total was paid as compensation. He specifically stated that he was not posted at the time of acquisition and whatever he stated is based on the official record.

H 14. Ext. A and Ext. A/1, valuation Khatiyayan mainly contains Khata No., Khesra No., area acquired, rate per acre, value of the land determined and other statutory benefits provided to one or other claimant. Those Exts. A and A/1 do not show anything

AHSANUL HODA v. STATE OF BIHAR
[SUDHANSU JYOTI MUKHOPADHAYA, J.]

319

about the market value of any land of the village or the nearby village. A

15. The Reference Court, based on the sale deeds Ext.1 and Ext.1/b and considering the evidence on record, determined the market value at Rs.250/- per decimal and allowed a sum of Rs.10,000/- towards damage of standing crops. B

16. This Court in number of cases has taken judicial notice of the fact that there is a steady increase in the market value of the land and has also adopted the procedure for determining the increased market value and relied upon the transaction at a given rate per year. C

17. In *General Manager, Oil and Natural Gas Corporation Limited vs. Rameshbhai Jilvanbhai Patel and Another* reported in (2008) 14 SCC 745, this Court observed that in the absence of other acceptable evidence, a cumulative increase of 10 to 15 per cent is permissible with reference to acquisitions in 1990. In the decades preceding 1990s, the quantum of increase was considered to be less than 10 per cent per annum. D E

18. This Court in *Sardar Joginder Singh vs. State of Uttar Pradesh and Another* (2008) 17 SCC 133, noticed that the said case related to acquisition in the year 1979 and relying upon the award related to an acquisition of 1969 observed that the general increase between 1969-79 can be taken to be around 8-10 per cent per annum. If this increase is calculated cumulatively, the total increase in 10 years would be around 100 per cent. F

19. The question relating to the value of larger extent of agricultural land, if required to be determined with reference to price fixed for small residential plot, came for consideration before this Court in *Haridwar Development Authority Vs. Raghubir singh and Others* (2010)11 SCC 581. In the said G H

A case, this Court held as follows:

B *"When the value of a large extent of agricultural land has to be determined with reference to the price fetched by sale of a small residential plot, it is necessary to make an appropriate deduction towards the development cost, to arrive at the value of the large tract of land. The deduction towards development cost may vary from 20% to 75% depending upon various factors. Even if the acquired lands have situational advantages, the minimum deduction from the market value of a small residential plot, to arrive at the market value of a larger agricultural land, in the usual course, will be in the range of 20% to 25%. In this case, the Collector has himself adopted a 25% deduction which has been affirmed by the Reference Court and the High Court. We, therefore, do not propose to alter it."*

E Therefore, it is clear that mere reliance made by a Court on sale deeds of smaller residential area for determination of market value of larger agricultural area, the same will not render the determination illegal until and unless it is shown that the determination was not proper.

F 20. In the instant case, the average value of the sale-deeds relied upon by the Reference Court (Ext.1 and Ext.1/b) was Rs. 401/- at the time of acquisition. Therefore, as the sale-deeds were in relation to smaller plots, the deduction of 37% was made by the Reference Court and thereafter, by allowing appropriate 10% increase in the value of the land from the date of the sale deeds upto the date of Notification under Section 4 of the Act, the Reference Court arrived at a figure of Rs.250/- per decimal. The High Court while arriving at figure of Rs. 100/- per decimal considered only the fact that the sale deeds relied upon were in relation to smaller plots and those sale deeds(Ext.1 and Ext.1/b) were related to homestead land and hence fixed Rs. 10,000/- per acre as compensation. It completely failed to consider the increase in price of land and

AHSANUL HODA v. STATE OF BIHAR
[SUDHANSU JYOTI MUKHOPADHAYA, J.]

321

the deduction made by the High Court is nearly 75% which is not in accordance with law. A

As Ext.1 and Ext.1/b which were related to smaller area, were the only sale deeds available for comparison, the same were relied upon by the Reference Court, but the High Court erred completely in disregarding the said sale-deeds and thus arrived at a finding of Rs.100/- per decimal as market value on mere presumption and surmises. There was no evidence on record to arrive at this value and, even if it was a case of deduction, the High Court has not given any reason in support of the same. B C

21. The High Court also committed error in holding that the sale deeds (Ext.1 and Ext.1/b) relate to homestead land, on the ground that a 'road' and a 'masjid' has been shown in the boundary of one of the exhibits. From the copies of Ext.1 and Ext. 1/b on record (Annexure P-12 Colly), we find no citation in Ext.1 showing the land as homestead land. On the other hand Ext.1/b specifically cites that the land is an agricultural land for which the annual revenue rent of Rs.25 is payable. D

22. The High Court disregarded the evidence adduced by the claimants in its entirety without any reason; however, it relied on evidence of an officer of the State (OP-W-1) Ratneshwar Pd. Singh and set aside the compensation in relation to the standing crops. The Reference Court has clearly recorded in its order that the said State Officer was not posted in that area at the time of acquisition and his knowledge was limited to the official record. The record was silent as to the standing crops. The Khatiyans (Ext.A and Ext.-A/1) were also not relating to standing crops. The fact that the Collector had not allowed any amount towards damage of standing crops and that no such amount is mentioned in the Khatiyans does not mean that no standing crop was there at the time of taking possession of the land. On the contrary, the witnesses AW-1 to AW-5 appeared and supported the statement of claimant that at the time of the E F G H

322 SUPREME COURT REPORTS [2013] 8 S.C.R.

A possession, standing crops were there which were damaged causing loss to the extent of Rs.10,000 to Rs. 12,000/-. During their cross examination the respondents could not extract any other material evidence against the claimants.

B 23. In view of the finding as recorded above, we have no other alternative but to set aside the order passed by the High Court and restore the award passed by the Reference Court. The impugned judgment passed by the High Court is accordingly set aside and the appeal is allowed. The respondents are directed to pay the appellant the compensation in terms of the award passed by the Reference Court after adjusting the amount already paid within three months. There shall be no separate order as to costs.

C
D B.B.B. Appeal allowed.