

IN THE HIGH COURT OF JUDICATURE AT PATNA
FIRST APPEAL No.322 of 1994

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Hetu Kishun Son of Late Sri Gudar Sao, Village Moshimpur Kurtha, Police
Station Fatwah, District Patna. Appellant/s
Versus
The State of Bihar Respondent/s
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with
FIRST APPEAL No. 323 of 1994

- =====
1. Ram Chandra Sao Son of Late Chhatu Sao, Village Mosimpur Kurtha,
Police Station Fatwah, District - Patna.
2. Bijendra Prasad Son of Late Ram Das Sao, Village Mosimpur Kurtha, Police
Station Fatwah, District - Patna.
3. Binay Kumar Son of late Ram Das Sao, Village Mosimpur Kurtha, Police
Station Fatwah, District - Patna.
4. Uma Shankar Prasad Son of Late Ram Das Sao, Village Mosimpur Kurtha,
Police Station Fatwah, District - Patna.
5. Om Prakash Gupta Son of Late Ram Das Sao, Village Mosimpur Kurtha,
Police Station Fatwah, District - Patna. Appellant/s
Versus
The State of Bihar Respondent/s
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with
FIRST APPEAL No. 325 of 1994

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Sri Arjun Pd. Gupta Appellant/s
Versus
The State of Bihar Respondent/s
=====

Appearance :

(In FIRST APPEAL No. 322 of 1994)

For the Appellant/s : Mr. Ram Nandan Prasad Sinha, Advocate

For the Respondent/s : Mr.

(In FIRST APPEAL No. 323 of 1994)

For the Appellant/s : Mr. Ram Nandan Prasad Sinha, Advocate

For the Respondent/s : Mr. Uday Shankar Sharan Singh, Advocate

(In FIRST APPEAL No. 325 of 1994)

For the Appellant/s : Mr. Ram Nandan Prasad Sinha, Advocate

For the Respondent/s : Mr. B.N.Singhaag.1, Advocate
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CORAM: HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
CAV JUDGMENT

Date : 14-10-2025

Heard learned counsel for the appellants and learned
counsel for the respondents.



2. All these three appeals have been preferred against the judgment and decree dated 14.10.1993 (hereinafter referred to as the impugned judgment) passed in Land Acquisition Case Nos. 08 of 1990, 07 of 1990 and 10 of 1990 passed by Sub-Judge 3rd, Patna (hereinafter referred to as the 'learned trial court') wherein and whereunder the learned trial court has awarded insufficient compensation with respect to the lands and houses which were acquired in above cases.

3. The Land Acquisition Officer, Patna has made a reference under Section 18 of the Land Acquisition Act regarding adjudication for the adequacy of the compensation for the lands and houses acquired. There having common question of law and facts of 14 cases including these cases were taken together by the learned trial court.

4. The facts leading to these cases are that about 01 Acre 15 Dismil of land along with houses standing over the same belonging to these awardees within the village- Mosimpur Kurtha P.S.- Fatwah, District- Patna acquired by the State of Bihar for the purpose of construction of approach road to Punpun bridge by a Gazette notification under Section 4 of the Land Acquisition Act on 16.08.1980. Date of declaration under Section 6 of the Act for the same was on 01.07.1982 and the award of the lands and houses



were made by the Collector on 23.09.1989 and the possession of the lands and the houses were taken on 18.05.1987 by the Collector. The compensation money for the bhith lands and homestead land acquired was paid to the awardees at the rate of Rs.96,000/- per acre i.e. Rs.3,000/- only per kattha. The Collector also paid the price of the houses to the awardees varying from Rs.3,690/- to Rs.2,31,750/-. The Collector also paid 30% solatium and interest on the amount of compensation to the awardees. The awardees received compensation money so awarded under protest to the effect that the compensation money awarded by the State of Bihar either for the lands or for the houses standing over the same was inadequate. Therefore, the Collector referred these cases to the court for adjudication of the adequacy of the quantum of the compensation.

5. According to the State of Bihar, compensation already paid for the lands and houses standing thereon was proper and adequate. On the other hand, the awardees have come before the court with their respective cases that the lands of the awardees lies within the notified area of Fatwah at the corner of the main road of Patna-Ranchi national Highway. It is also the case of the awardees that Land Acquisition Officer has relied upon the sale deed which do not represent true and real market value of the lands under



acquisition and has left out the true and genuine sale deed of the locality representing higher price. They have claimed the price of the acquired lands at the rate of Rs.50,000/- per kattha. They have also made out their case that the Executive Engineer of the State has failed to take into account the correct aspect of engineering in respect of making assessment of the value of the buildings of the awardees. He should have taken into account while determining the compensation of the buildings as to what would be real cost in erecting a building similar to existing building of the awardees at the time of notification. According to their cases, inadequate price of their buildings has been fixed by the Land Acquisition Officer on the basis of unscientific report of Executive Engineer. However, the awardees have claimed the price of their respective houses varying from Rs.50,000/- to Rs.12,95,475/-. They have also claimed compensation for damages done for their business premises.

Submission on behalf of the Appellants/defendants

6. Learned counsel for the appellants/defendants has submitted that the learned Special Land Acquisition Judge-III has committed error of law as also on the facts in deciding the claim of the appellants. The learned trial court did not appreciate correctly the pleadings of the parties, made wrong and illegal approach to



the cases. It has further been submitted that the total houses of these awardees constructed over 0.045 acres have been acquired by the State of Bihar and paid Rs.2,10,257 and 25 paise only which has been received by the appellants/defendants under protest and they have claimed the rate of land at Rs.50,000/- per kattha and Rs.8,11,414 for the houses. Rs.28,000/- annual for the loss of business and Rs.90,000/- for loss of furniture and goods. It has also been submitted that the awardees have examined altogether 16 witnesses and they have adduced documentary evidence, State of Bihar has not given any written submission nor has examined any witness except OW-1, Mathura Pandey who has only proved rate report over khatiyaan, sale statement, possession certificate.

7. The learned trial court has not appreciated the evidence adduced by the appellants/defendants. It has also been submitted that the learned trial court has held at paragraph '8' of the judgment that "the aforesaid document in support of the price of the land determined by the State of Bihar have no evidentiary value and as such the aforesaid documents cannot be relied upon and in these circumstances the price of lands determined by the State of Bihar on the basis of sale figure mentioned in column 8 of the sale statement cannot be relied and adopted."



8. Learned trial court has relied on Ext-4/A, Sale deed of year 1979 and according to this sale deed, the price of the land comes to Rs.17,647/- per kattha but the learned trial court has wrongly fixed the price of land at Rs.7,000/- per kattha, though the price of the land is increasing day by day. So far the price of the double storeyed houses is concerned the learned trial court after going through the evidence of the witnesses and the documents held in paragraph-11 of the judgment that the evidence of AW-3 is admissible in law. His evidence being evidence of expert. The Ext-1/E and 2/E have been prepared by AW-3 who is expert and he has mentioned in detailed specifications and there is no material on the record to controvert the estimate prepared by AW-3. It has also been submitted that all the witnesses including independent witnesses have clearly stated that the acquired house to the newly constructed double storeyed building and situated at Patna-Ranchi road and Railway Station, Police station, Post-office, market bazaar and area was near to the acquired house and the witnesses have also stated that these awardees had business premises in the house and the learned trial court has taken into consideration but he has erred in deducting depreciation at the rate of 65% from the estimate Ext-2/E.



9. It has further been submitted that there is clear evidence of AW-1 that there was well in the house but the learned trial court has not considered this aspect of the case and has erred in not awarding the compensation for the well. Ext-5/A is a license of foodgrains which shows that the appellants had business in their houses but the trial court has not awarded any compensation for the loss of business. Appellants have also claimed for the loss of furniture goodwill of the firm and has further claimed the charges on the removal of the articles but the trial court has ignored the same. As such, it has been prayed to set aside the award of the learned trial court.

10. Learned counsel for the appellants/ has relied on following citations :-

i) (2010) 13 SCC 710

ii) (2012) 5 SCC 432

iii) (2025) SCC Online SC 1519

Submission on behalf of the Respondents/plaintiffs

11. Respondents/plaintiffs has not made out a case by filing any written statement in the trial. At the appellate stage, learned counsel for the State has relied on certain citations, such as AIR 1977 SC 580, AIR 1977 SC 560, AIR 2010 SC 170, AIR 2004



SC 4532 :: 2004 AIR SCW 4255 and AIR 2004 SC 288 :: 2003 AIR SCW 6117.

12. In this case the awardees have examined altogether 20 witnesses in support of their claim. They are hereunder in a tabular form :-

AW-1	Bimla Devi
AW-2	Hiramani Devi
AW-3	Jagdish Prasad Yadav
AW-4	Ganga Prasad Sah
AW-5	Nanad Lal Gope
AW-6	Arjun Prasad Gupta
AW-7	Sarjug Yadav
AW-8	Ramchandra Sah
AW-9	Ganga Prasad Mistry
AW-10	Babu Chand
AW-11	Parmatama Kumar Singh
AW-12	Krishna Prasad Singh
AW-13	Lal Babu Sah
AW-14	Ram Prasad Singh
AW-15	Radhe Lal
AW-16	Raja Mistry
AW-17	Jagdish Singh
AW-18	Janardan Prasad Singh
AW-19	Rajdeo Prasad Singh
AW-20	Bijay Kumar Singh

13. Apart from this, following documentary evidences were adduced by the awardees :-

Ext-1 & 2	Map and estimate of the house of the
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	awardees prepared by Consolidation Engineer through Jagdish Prasad Yadav (AW-3) with respect to the house.
Ext-3	Tax payment receipts issued by Notified Area Committee, Fatwah.
Ext-4	Certified copy of sale deed no. 3580 dated 12.07.1976 executed by Smt. Rajmati Devi.
Ext-4/A	Certified copy of sale deed no. 4595 dated 16.10.1979 executed by Smt. Reshmi Devi.
Ext-5	License for foodgrains business.

14. As against this, the defendants/appellants has examined only one witness, i.e. OW-1 namely, Mathura Pandey who has identified Ext-A- Rate report prepared by District Land Acquisition Officer, Patna, Ext-B – Valuation khatiyaan and Ext-C- Sale statement.

Issues before the learned trial court

15. There were two issues before the learned trial court.

First issue :- The first issue was whether the compensation money awarded by the State of Bihar in respect of land is proper and adequate or it requires to be changes.

Second issue :- Second is whether the amount of compensation paid by the Collector in respect of the house of the awardees is proper and adequate and according to size, age and



construction of the building under the acquisition. These are also two major issues at this stage.

16. First of all, I will consider the first issue. On this issue, oral as well as documentary evidences have been adduced on behalf of the awardees. Witness nos. AW-1, AW-2, AW-4, AW-5, AW-6, AW-7, AW-8, AW-10, AW-11, AW-15, AW-17, AW-19 and AW-20 are the awardees of the different cases. They have categorically stated in their oral evidence that price of the land should have been determined at the rate of Rs.50,000/- per kattha with respect to the rates of the land, documentary evidence is also available. AW-13 has stated in his evidence that he has purchased 8 and half dhurs of land in village Mosimpur Kurtha for Rs.7,500/- in the year 1979. He has also filed tax receipt of the acquired house of the awardees which are Ext-3 series. Awardees have also filed certified copies of two sale deeds in support of their claim. They have further filed Ext-5 showing that some of the awardees were doing foodgrain business in the acquired house. Only one witness on behalf of the State namely, Mathura Pandey has been examined by the State who has proved the signature of Jai Shankar Tiwary, Land Acquisition Officer on rate report vide Ext-A. He has also proved valuation Khatiyaan prepared by one Mangal Prasad vide Ext-B. He has further proved the sale figures prepared by one



Satya Narayan Singh, Land Surveyor vide Ext-C and paper of possession plan vide Ext-D which has been prepared by Mangal Prasad, Surveyor and signed by Land Acquisition Officer. This witness has also stated in his cross-examination that he has no concern with the preparation of the aforesaid documents. He is purely a formal witness.

17. Learned trial court has disbelieved the basis on which the compensation has been determined by the Collector. As the price of the land acquired has been determined solely on the basis of only one sale deed mentioned in column-8 of the sale statement as against average rate of all the sale deeds shown in the sale figure regarding similar type of land to that of acquired one has to be done and has also not accepted Ext- C and Ext- A.

18. Learned counsel for the appellants/defendants has argued that from perusal of the impugned judgment it will transpire that the learned trial court has relied on the decision of Hon'ble Apex Court reported in **AIR (1979) 472** in which their Lordships of the Hon'ble Apex Court has held that 'mere sale statement is not admissible in law'. Admittedly, the author of sale rate namely, Land Acquisition Officer has not been examined in this case. Learned trial court has not relied upon the documents which has been adduced by the respondents and has categorically



held that sale figures mentioned in Column-8 of the sale statement cannot be relied rather the trial court has relied on the sale deeds, more specifically Ext-4 and Ext-4/A. Ext-4 is the sale deed dated 12.07.1976 executed by Rajmati Devi in favour of Smt. Chanda Devi under which plot Nos. 140 and 141 having an area of 504 Sq. ft. was sold for Rs.9,000/- which comes to Rs.24,140/- per kattha. AW-16, Raja Mistry is the nephew of the purchaser Smt. Chanda Devi. Admittedly, the notification of the acquisition was made in the year 1980 and this sale deed was executed in the year 1976 and another sale deed Ext-4/A dated 16.10.1979 executed by Reshmi Devi to Smt. Sudama Devi wife of Lal Babu Sah under which an area of 8.5 dhurs was sold for Rs.7,500/- which comes to Rs.17,647/- per kattha. Learned trial court has not accepted the Ext-4 saying that this is of the year 1976 which is of much earlier and has relied on Ext-4/A which is close to the date of notification of the acquisition. The lands under the aforesaid sale deeds situate in the vicinity of the acquired lands which fact is evident from survey map, Ext-6. Learned trial court has also held that 'it does not stand to my reason as to why this sale deed has not been taken into consideration by the Land Acquisition Officer. It has been simply rejected on the ground that it has been executed on



competitive basis although there is no such evidence on the record, so the aforesaid sale deed has to be considered in this case.”

19. Learned counsel for the appellants/defendants has submitted that recently in the case of **Manohar and others vs. State of Maharashtra and Others**, the Hon'ble Supreme Court has held in Paragraphs 31, 38, 39 and 40 as follows :-

31. In the case of Anjani Molu Dessai (*supra*) this Court, while referring to two previous decisions of this Court, held thus:

"20. The legal position is that even where there are several exemplars with reference to similar lands, usually the highest of the exemplars, which is a bona fide transaction, will be considered. Where however there are several sales of similar lands whose prices range in a narrow bandwidth, the average thereof can be taken, as representing the market price. But where the values disclosed in respect of two sales are markedly different, it can only lead to an inference that they are with reference to dissimilar lands or that the lower value sale is on account of undervaluation or other price depressing reasons. Consequently, averaging cannot be resorted to. We may refer to two decisions of this Court in this behalf.

21. In *M. Vijayalakshamma Rao Bahadur v. Collector*, [(1969) 1 Mad LJ 45 (SC)], a three-Judge Bench of this Court observed that the proper method for evaluation of market value is by taking the highest of the exemplars and not by averaging of different types of sale transactions. This Court held: (ML) pp. 46-47)

"It seems to us that there is substance in the first contention of Mr. Ram Reddy. After all when the land is being compulsorily taken away from a person, he is entitled to say that he should be given the



highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. It is not disputed that the transaction represented by Ext. R-19 was a few months prior to the notification under Section 4 that it was a bona fide transaction and that it was entered into between a willing purchaser and a willing seller. The land comprised in the sale deed is 11 grounds and was sold at Rs. 1961 per ground. The land covered by Ext. R-27 was also sold before the notification but after the land comprised in Ext. R-19 was sold. It is true that this land was sold at Rs. 1096 per ground. This, however, is apparently because of two circumstances. One is that betterment levy at Rs. 500 per ground had to be paid by the vendee and the other that the land comprised in it is very much more extensive, that is about 93 grounds or so. Whatever that may be, it seems to us to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. In any case we see no reason why an average of two sale deeds should have been taken in this case."

22. In *State of Punjab v. Hans Raj*, [(1994) 5 SCC 734] this Court held: (SCC p. 736, para 4)

"4. Having given our anxious consideration to the respective contentions, we are of the considered view that the learned Single Judge of the High Court committed a grave error in working out average price paid under the sale transactions to determine the market value of the acquired land on that basis. As the method of averaging the prices fetched by sales of different lands of different kinds at different times, for fixing the market value of the acquired land, if followed, could bring about a figure of price which may not at all be regarded as the price to be fetched by sale of acquired land. One should



not have, ordinarily recourse to such method. **It is well settled that genuine and bona fide sale transactions in respect of the land under acquisition or in its absence the bona fide sale transactions proximate to the point of acquisition of the lands situated in the neighbourhood of the acquired lands possessing similar value or utility taken place between a willing vendee and the willing vendor which could be expected to reflect the true value, as agreed between reasonable prudent persons acting in the normal market conditions are the real basis to determine the market value.**”

(emphasis supplied)

38. Thirdly, relying on paragraph 20 of *Anjani Molu Dessai (supra)* which has been reproduced hereinbefore so also paragraph 18 of *Nirmal Singh (supra)*, the learned counsel for Respondent No. 3 (MIDC) contended that the Reference Court has rightly used the principle of averaging of sale price of sale exemplars at Sr. Nos. 1 to 3 and 5 for determination of market value of the acquired land as the same is a well-established principle of law laid down by this Court in several cases. For ease of reference, *paragraph 18 of Nirmal Singh (supra)* is reproduced and it reads thus:

"18. Keeping in mind the guidelines laid down by this Court in the catena of cases referred to supra, we are of the opinion to determine just and reasonable compensation for the acquired land on the basis of the sale instances as submitted by the appellants by taking the average of the sale considerations mentioned therein that are relevant to the date of issue of notification under Section 4 of the Act. However, the same is to be determined keeping in mind that developmental costs are higher for larger areas of land as compared to small portions of land. The rate of compensation must be subject to deductions towards developmental purpose that will have to be incurred by the respondent State."



(emphasis supplied)

39. Insofar as the contention of the learned counsel for Respondent No. 3 (MIDC) that the Courts below rightly excluded the sale exemplar at Serial No. 4 on account of it being of an abnormally high value is concerned, we outrightly reject the said contention.

40. It is well-settled that the compensation payable to the owner of the land is determined by reference to the price which a seller might reasonably expect to obtain from a willing purchaser. It is further settled law that the land acquired has to be valued not only with reference to its condition at the time of notification under Section 4 of the LA Act but its potential value must be taken into account. In this respect, the sale deeds of lands situated in the vicinity and the comparable benefits and advantages which they have, provide a ready method of computing the market value.

20. As against this, the learned counsel for the respondents/plaintiffs has relied on the judgment of the Hon'ble Supreme Court reported in **AIR 1977 SC 580 :: 1977 REV LR 1** as follows:-

(A) Land Acquisition Act (1 of 1894), S.23(1)- Market value- Determination- Considerations- Land classified into potential building area and agriculture land- Latter not also accessible- Compensation cannot be granted at the same rate as that for potential building area.

The measure of compensation to be awarded to the owners of immovable property acquired by the State is enshrined in Section 23 (1) of the Act which is designed to award just and fair compensation for the acquisition. According to this provision, compensation has to be awarded on the basis of the market value prevalent on the date of the publication of the notification under Section 4 (1) of the Act. The said market rate



must be determined by reference to the price which a willing vendor might reasonable expect to obtain from a willing purchaser. For ascertaining the market rate the court can rely upon such transactions which would afford a guide to fix the price. Price paid for a land acquired within a reasonable time from the date of acquisition of the land in question would certainly be the best piece of evidence. Price paid for a land possessing advantages similar to those of the land acquired in or about the time of notification will also supply the date for assessment of compensation.

In case where the land sought to be acquired was classified into two categories namely a potential building area and agricultural lands and apart from the fact that the land which fell within the second category was situate in the rear away from habitation it suffered from two other drawbacks in that it was not accessible from either side of the two roads and there are no roads therein. Held that the owners cannot be justifiably granted compensation for the agricultural land at the rate determined in respect of the potential building area which possessed far greater advantages.

(B) Land Acquisition Act (1 of 1894) S.23(1)- Compensation- Determination- Value fetched for small plots cannot be applied to lands covering a large extent.

AIR 1971 SC 2015, Ref.

(Para 8)

8. The contention of counsel for the appellants in the aforesaid two appeals that they should have at least been awarded compensation for the potential building area at the rate prevalent in Gopalnagar in 1958-59 cannot also be acceded to. A glance at the chart of the acquisitions which appears at page 85 of the Paper Book shows that the sales were of very small plots of land. In seven transactions out of eight to which our attention has been invited, the land



acquired was below 200 sq. yds. and in the eighth transaction, it was 250 sq yds. **It is also well settled that in determining compensation the value fetched for small plots of land cannot be applied to the lands covering a very large extent and that the large area of land cannot possibly fetch a price at the same rate at which small plots are sold. (See Collector of Lakhimpur v. Bhuban Chandra Dutta (AIR 1971 SC 2015).** All the three contentions advanced on behalf of the claimants of compensation, therefore, fail.

21. Learned counsel for the respondents/plaintiffs has also relied on the judgment of the Hon'ble Supreme Court reported in **AIR 1977 SC 1560 :: 1977 REV LR 290** as follows:-

**(B) Land Acquisition Act (1 of 1894)
S.23, S.54- Determination of
compensation -Market value, meaning
of- Appeal against judgment of High
Court- Interference by Supreme
Court.**

S. 23 of the Land Acquisition Act provides that in determining the amount of compensation to be awarded for the land acquired under the Act, the Court shall take into account inter alia the market value of the land at the date of the publication of the notification under S. 4 of the Act. The market value means the price that a willing purchaser would pay to a willing seller for the property, having due regard to its existing condition with all its existing advantages and its potential possibilities when laid out in the most advantageous manner excluding any advantage due to the carrying out of the scheme for which the property is compulsorily acquired. In considering market value the disinclination of the vendor to part with his land and the



urgent necessity of the purchaser to buy should be disregarded. There is an element of guess-work inherent in most cases involving determination of the market value of the acquired land. But this in the very nature of things cannot be helped. The essential thing is to keep in view the relevant factors prescribed by the Act. If the judgment of the High Court reveals that it has taken into consideration the relevant factors, the assessment of the market value of the acquired land should not be disturbed.

22. Learned counsel for the appellants/defendants has held that though the Hon'ble Supreme Court has held in Paragraph '31' of the judgment in the case of **Manohar and Ors. vs. State of Maharashtra** (*supra*) that the legal position is that even where there are several exemplars with respect to similar lands, usually the highest of the exemplars which is bona fide transaction, will be considered. Learned counsel for the appellants/defendants has further submitted that even from the judgment of the trial court it is clear that learned trial court has considered Ext-4/A according to which the consideration money of Ext.-4/A comes to Rs.17,647/- per kattha and has also considered that the lands are very close to the lands under acquisition and has also considered that the lands are situated on the roadside and has got commercial value.

23. Learned trial court has also recorded that it is also our common experience that the valuation of the land is increasing day by day. So, it is proper to compute the valuation of the lands



on the basis of the sale deed executed in respect of the lands at or about the time of issuing notification. Admittedly, the lands in question of these awardees are homestead lands, so there is no justification for the State of Bihar in awarding compensation money for the homestead land to the awardees at the rate of Rs.3,000/- per kattha rate. As such, the trial court was of the opinion that the price of the lands acquired should be enhance to more than these amounts. Despite holding all this, learned trial court has assumed a rate of Rs.7,000/- per kattha to be the proper price of the acquisition land. Learned counsel for the appellants/defendants has submitted this Rs.7,000/- per kattha rate which has been fixed by the learned trial court for the compensation is without any basis. During course of argument, even the learned counsel for the respondents/plaintiff could not advance any argument as to on what basis this Rs.7,000/- per kattha has been fixed as rate of the acquired lands.

24. Admittedly, there were two sale deeds, Ext-4 and Ext-4/A. Ext-4 was not accepted by the trial court on the ground that it was executed four years before the notification and has only considered Ext-4/A for the fixing the price of the land. According to Ext-4/A the price of the land would come to Rs.17,647/- per kattha. So as the learned trial court has considered and accepted



Ext-4/A, I do not find any reason and even the learned counsel for the respondents has also not been able to show any reason as to why Ext-4/A should not be considered and accepted. As such, the sale price which has been described in Ext-4/A which comes to Rs.17,647/- per kattha should be the rate per kattha of the acquired land which comes to Rs. 17,647 per kattha, i.e. **Rs.17647x32= Rs.5,64,704/-** only per acres will be the rate for awarding compensation to the awardees.

25. In view of Section 28 of the Land Acquisition Act, 1894, interest at the rate of 9% per annum shall also be paid to the awardees from the date on which the Collector took the possession of the land till the date of payment of excess amount.

26. Second point for consideration before this Court is regarding the compensation with respect to building. Learned trial court has held that admittedly, there were buildings of the awardees on the acquired land under village Mosimpur Kurtha which have been acquired by the State of Bihar. Price fixed in respect of the houses of the awardees by the State of Bihar, respective claimants of the awardees and estimate by the private consultant engineer is annexed:-

L.A. Case No.	Price fixed by the Collector	Claim of the awardees	Estimate made by the consultant engineer
7 of 1990	Rs.1,54,900/-	11,00,000/-	6,89,213/-
8 of 1990	Rs.99,255/-	8,11,414/-	4,70,000/-



10 of 1990	Rs.1,24,480/-	9,39,280/-	5,51,332/-
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27. Learned trial court has held that the houses and its valuation prepared by Executive engineer on behalf of the State of Bihar but neither the Executive engineer has come to support the valuation entry as mentioned in Ext-B. Even Land Acquisition Officer has not come to substantiate it. The basis on which the valuation of the house has been fixed by the Collector is lacking in this case and the learned trial court has further opined that the valuation made by the Collector cannot be relied on. As far as the case of the awardees is concerned, they have come before the court as a witness and they have been given a specification of their case in their respective defence. It is also admitted that the acquired building is situated within the notified area of Fatwah and was on roadside. This fact has been supported by the independent witness AW-9, AW-12 and AW-18. It is also the case of the awardees that they had business premises in their house. This fact has also been stated by the witnesses. There is also evidence that most of the houses were mosaic and well maintained. Learned counsel for the appellants/defendants has submitted that the awardees have been uprooted from their houses and they are on road. It has been argued that the price of construction of the material is going high day by day. As such, sufficient compensation amount was



demanded by them, so that they may settle or construct their houses in similar area.

28. Learned trial court has examined the evidence of consultation engineer who has been examined as AW-3 by the awardees and in his evidence he has stated that he has prepared the map of the house and estimate as well as of the awardees. He has proved the map and estimate vide Ext-1 and 2 series. No doubt it has come in his evidence that no government official was present at the time of measurement and verification made by him. This witness has also stated that he has submitted the estimate of material of the house of year 1983 for the acquisition of the house in question was made in year 1980. Age of different houses acquired has also not been assessed by this witness. Learned trial court has further held that the depreciation as given in the case by the engineer does not fit with the circumstances of the case.

29. Learned counsel for the appellants/defendants has argued that the learned trial court has opined that 65% deduction as estimate submitted by the engineer in the cases of awardees will meet the ends of justice and this will be proper valuation of the house of the awardees including the damages for their business, if any. Learned counsel for the appellants/defendants has submitted that in any stretch of imagination it cannot be concluded that 65%



of the depreciation is proper. Though the houses were acquired in the year 1980 and the consultant engineer has given his report has stated that he has submitted the estimate of materials of the house of year 1983. It means there is difference of three years in the rate of the construction materials. Learned counsel for the appellants/defendants has also submitted that not only they have been uprooted from the house but they have also lost their goodwill which they have earned through their businesses from their house. So it has been submitted that the depreciation at the rate of 65% is arbitrary.

30. Learned counsel for the respondents has argued that there are rules for depreciation which he will brought before Court after obtaining it from Municipal Corporation but despite being given sufficient opportunity, he was not able to produce the documents regarding rules of depreciation.

31. I am of the view that the depreciation of 65% is arbitrary. Normally the life of a house is estimated at 50 years. In that circumstance, depreciation per year will be not more than 2%. Since the estimation which was submitted by the consultant engineer was of 1983, so at most 6% may be regarded as depreciation cost. It is also a case of the awardees that they had businesses in their houses and it is the duty of the State to



adequately compensate the awardees so that they may be restored into their position which they had before acquisition of their land and house.

32. As the awardees have been uprooted from their house, they have to construct their new houses and they will have to spend more than the estimated cost of the materials of the house. So, in my view the damages for their reconstruction and business, if any, should be at least 10% of the estimated cost of the consultant engineer. As there is no other evidence on the record, this Court has got no option than to accept the report of the consultant engineer.

33. As such, the compensation with respect to the houses of awardees will be calculated in view of the discussions made hereinabove.

34. In view of aforesaid discussions, I am of the view that the learned trial court has arbitrarily decided the compensation and his conclusion was not based on the materials available on the record. The amount which he has determined for compensation was based merely on assumption without any document.

35. As such, considering above facts and circumstances of the case, the judgment and decree of the learned trial court is set aside and in result, these appeals are allowed.



36. Office is directed to prepare the decree/award.

37. Let the records of the learned trial court with a copy
of this judgment be sent to the learned trial court.

(Ashok Kumar Pandey, J)

Durgesh/-

AFR/NAFR	NAFR
CAV DATE	25.09.2025
Uploading Date	14.10.2025
Transmission Date	

