

SPL. LAND ACQUISITION OFFICER

v.

MAHARANI BISWAL AND ORS.

(Civil Appeal No. 2672 of 2004)

AUGUST 24, 2011

[DR. MUKUNDAKAM SHARMA AND
ANIL R. DAVE, JJ.]

Land Acquisition Act, 1894:

Compensation – Determination of – Land measuring Ac.4.98 situated in village Lodhani in the District of Dhenkanal notified for acquisition – Land acquisition officer fixed compensation at Rs. 3100 – Reference court enhanced compensation to Rs. 10,000 per acre – High Court further enhanced compensation amount to Rs. 75,000 per acre – On appeal, held: Reference Court discussed entire evidence including the deposition of witnesses and on appreciation thereof came to a definite finding that the acquired land on the date of issuance of the notification u/s.4 could not be valued and assessed at more than Rs. 10,000/- per acre – Said amount was just and fair compensation for the land acquired – High Court failed to indicate as to how the said findings were unreasonable and unjustified and proceeded on wrong notion that the sale deeds of tiny pieces of land could be determining factor as the land acquired in the instant case was Ac. 4.98 decimals as against the sale deeds relied upon by which not even 1 decimal of land was sold – Considering the entire facts and circumstances of the case, judgment passed by the High Court set aside – Matter remitted to High Court for consideration afresh.

Land measuring AC.4.98 situated in village Lodhani in the district of Dhenkanal was notified for acquisition on 18.2.1987. The land acquisition officer on 2.3.1988

A granted compensation for the acquired land @ Rs. 3100 (Taila land) and Rs. 5490 (Sarad land) per acre. Dissatisfied with the compensation amount, the land owners filed reference applications. The reference court determined the compensation @ Rs. 10,000 per acre. The claimants and the land acquisition officer both filed appeals before the High Court. The High Court enhanced the compensation amount to Rs.75,000 per acre. The instant appeal was filed by the land acquisition officer challenging the order of the High Court.

C Disposing of the appeal and remitting the matter to the High Court, the Court

HELD: 1. The entire burden was placed on respondents to prove and establish that they were entitled to more than Rs. 3,100/- per acre which was determined by the Land Acquisition Officer. In order to prove the said fact, the respondents examined four witnesses and relied upon five sale deeds which were exhibited as Ext. 3 dated 14.9.1988, Ext. 4 dated 15.4.1985, Ext. 5 dated 25.5.1984, Ext. 6 dated 15.7.1985, whereas the respondents also relied on Ext. 7 to show the location of G.P. Office and Grain Gola Office. The respondents also filed on record a map as Ext. 8 which disclosed that a road runs in between the acquired land. However, there was no evidence to show that the said road, which ran in between the acquired land was a national highway. No such documentary evidence was placed on record to prove the said fact. The notification under Section 4 was issued on 18.2.1987 and, therefore, market value as existing near about the said date and near about the same land was to be determined and assessed. The Reference Court very elaborately and minutely discussed the entire evidence on record including the deposition of the witnesses and on appreciation thereof came to a definite finding and conclusion that the acquired land on the date

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of issuance of the notification under Section 4 cannot be valued and assessed at more than Rs. 10,000/- per acre. Consequently, the said amount was determined by the Reference Court as just and fair compensation for the land acquired. As against the said findings giving cogent reasons, the High Court failed to indicate as to how the said findings were unreasonable and unjustified fixing the compensation of the land at Rs. 10,000/- per acre. It was necessary for the High Court to give reasons for its disagreement with the findings of the Reference Court but nothing of that nature was done by the High Court and the High Court arrived at an abrupt decision raising the compensation to Rs. 75,000/- per acre. [Para 10, 11] [614-G-H; 615-A-G]

2. Since the High Court did not consider the oral evidence and also did not properly analyse the documentary evidence available on record, the judgment and order passed by the High Court cannot be sustained and has to be interfered with. This is also because of the fact that the High Court proceeded on a wrong notion that the sale deeds of tiny pieces of land could be the determining factor as the land acquired in the instant case was Ac. 4.98 decimals as against the sale deeds by which not even 1 decimal of land was sold. There was total misreading of the evidence on record and also misinterpretation of the legal proposition settled by this Court. [Para 13] [617-B-C]

3. Considering the entire facts and circumstances of the case, the judgment and order passed by the High Court is set aside. The High Court should discharge its duty and responsibility of appreciating the entire evidence on record as it is the last court of appeal in view of the provisions of Section 54 of the Act and thereafter give a proper finding on the basis of both, oral and documentary evidence by taking notice of the observations made herein and thereafter decide all the

A issues that are raised before it by the parties. [Para 14]
[617-D-F]

*Navanath and Others v. State of Maharashtra (2009) 14
SCC 480: 2009 (6) SCR 632 – relied on.*

B Case Law Reference:

2009 (6) SCR 632 relied on Para 12

CIVIL APPELLATE JURISDICTION : Civil Appeal No.
2672 of 2004.

C From the Judgment & Order dated 04.10.2001 of the High
Court of Orissa at Cuttack in First Appeal No. 369 of 1990.

Suresh Chandra Tripathy for the Appellant.

D Janaranjan Das, Swetaketu Mishra, P.P. Nayak for the
Respondents.

The Judgment of the Court was delivered by

E ANIL R. DAVE, J. 1. The present appeal is filed against
the judgment and order dated 04.10.2001 passed by the High
Court of Orissa whereby the High Court, vide a common
judgment, dismissed First Appeal No. 428 of 1990 filed by the
Special Land Acquisition Officer and partly allowed First
F Appeal No. 369 of 1990 filed by the Respondents herein.

G 2. The issue that falls for consideration in the present
appeal is whether the assessment and determination of
compensation awarded to the respondents for acquisition of
their land and increasing it from Rs. 10,000/- to Rs. 75,000/-
per acre is on the higher side and is a proper reflection of the
market price of the land.

H 3. The facts leading to the filing of the present case are
that Land measuring Ac. 4.98 decimals appertaining to Plot
Nos. 6588/6861, 6567, 6576, 6565, 6561 to 6564, 6581, 5873,

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6566 and 6560 under Khata No. 88 situated in village Lodhani under Parajang Police Station in the District of Dhenkanal was notified to be acquired for Parajang Distributory as per Revenue Department declaration No. 9420 dated 18.02.1987. The Land Acquisition Officer vide order dated 02.03.1988 granted compensation for the acquired land at the rate of Rs. 3100/- (Taila Land) and Rs. 5490/- (Sarad Land) per acre. The owner-claimants received the compensation so determined under protest and moved the Ld. Subordinate Judge by L.A. Misc. No. 37/88 under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") against the order of the Land Acquisition Officer dated 02.03.1988.

4. The Ld. Subordinate Judge, after receiving evidence, by an order dated 06.09.1990, determined the compensation of the acquired land at the rate of Rs. 10,000/- per acre.

5. Aggrieved by the aforesaid order of the Ld. Subordinate Judge dated 06.09.1990, the claimants filed First Appeal No. 369 of 1990 and the Land Acquisition Officer filed First Appeal No. 428 of 1990 before the High Court of Orissa. The High Court vide order dated 04.10.2001, by a common judgment, dismissed First Appeal No. 428 of 1990 filed by the Land Acquisition Officer and partly allowed First Appeal No. 369 of 1990 filed by the claimants and thereby enhanced the compensation of the said land from Rs. 10,000/- per acre to Rs. 75,000/- per acre.

6. Aggrieved by the aforesaid order dated 04.10.2001, the Land Acquisition Officer has filed this appeal, upon which, we heard the learned counsel appearing for the parties.

7. The learned counsel appearing for the appellant drew our attention to the impugned judgment and order passed by the High Court and by making reference to the same, the counsel submitted that despite clear findings recorded by the Reference Court determining compensation of the land acquired at Rs. 10,000/- per acre on proper appreciation of the

A documentary as also of oral evidence on record, it was not justified for the High Court to enhance the compensation to Rs. 75,000/- per acre without properly appreciating the documents on record.

B 8. He also submitted that the High Court relied upon the sale deeds by which very small pieces of land were sold and transferred. He, therefore, submitted that the price at which such small pieces of lands were sold did not reflect the correct market value. Moreover, he submitted that the land was not much developed as there were hardly four or five houses in the vicinity. He drew our attention to the evidence led before the court to substantiate his claim. He also submitted that expenses were required to be incurred by the Government to make the acquired land fit for the purpose for which it was being acquired. It was submitted that in that regard, deduction was required to be made as certain lands were going to be lost for which deduction was called for as has been repeatedly held by this Court, but that was not done by the High Court in the present case and, therefore, the judgment and order is required to be set aside and quashed.

E 9. Counsel appearing for the respondents however, refuted the aforesaid submissions while submitting that the aforesaid sale deeds relate to lands, which are located near the acquired land and so they were the best guide to determine the compensation and, therefore, the High Court was justified in relying on the said sale deeds and arriving at a just and fair compensation.

G 10. In order to appreciate the aforesaid contentions of the counsel appearing for the parties, we have ourselves scrutinized the records. The entire burden is placed on respondent to prove and establish that they are entitled to more than Rs. 3,100/- per acre which was determined by the Land Acquisition Officer. In order to prove the said fact, the respondent examined four witnesses and relied upon five sale H deeds which were exhibited as Ext. 3 which is dated

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14.9.1988, Ext. 4 dated 15.4.1985, Ext. 5 dated 25.5.1984, Ext. A
6 dated 15.7.1985, whereas the Respondents' claimants also
relied on Ext. 7 to show the location of G.P. Office and Grain
Gola Office. The respondents also filed on record a map as
Ext. 8 which discloses that a road runs in between the acquired
land. However, there is no evidence to show that the aforesaid B
road, which runs in between the acquired land is a national
highway. No such documentary evidence was placed on record
to prove the said fact. The notification under Section 4 in the
present case was issued on 18.2.1987 and, therefore, market
value as existing near about the said date and near about the C
same land is to be determined and assessed. The Reference
Court has very elaborately and minutely discussed the entire
evidence on record including the deposition of the witnesses
and on appreciation thereof has come to a definite finding and
conclusion that the acquired land on the date of issuance of the D
notification under Section 4 cannot be valued and assessed
at more than Rs. 10,000/- per acre. Consequently, the said
amount was determined by the Reference Court as just and fair
compensation for the land acquired.

11. As against the aforesaid findings giving cogent E
reasons, the High Court, failed to indicate as to how the
aforesaid findings are unreasonable and unjustified fixing the
compensation of the land at Rs. 10,000/- per acre. The High
Court enhanced the compensation to Rs. 75,000/- per acre
without any appreciation of the evidence on record and also F
without considering the findings of the learned Reference Court
and ultimately rejecting the same. It was necessary for the High
Court to give reasons for its disagreement with the findings of
the Reference Court but nothing of that nature was done by the
High Court and the High Court arrived at an abrupt decision G
raising the compensation to Rs. 75,000/- per acre.

12. In this regard, we may refer to the judgment of this
Court in the case of *Navanath and Others Vs. State of*
Maharashtra reported in (2009) 14 SCC 480, in which this
Court while discarding the findings of the High Court, which H

A were found to be based on surmises and conjecture, restored to the findings of the Reference Court which were based on detailed examination of materials brought on record held thus:-

B "31.The Reference Judge had taken into
- consideration the evidences adduced on behalf of both the parties not only with regard to the classification of the land but also the number of trees, their age, the quality, etc. We may notice that the learned Reference Judge determined the question in regard to the classification of land on the
C basis of the evidences adduced before it by individual landowners; by way of example, having regard to the fact that the claimants had failed to prove that the land had any irrigational facility, the learned Reference Judge classified the lands as jirayat lands. If the State was aggrieved thereby, it was bound to show that the findings arrived at
D by the Reference Court is not sustainable having regard to the materials brought on record.

E 32. The finding of fact arrived at by the learned Reference Judge on the basis of the materials brought on record, in our opinion, could not have been interfered with by the High Court on the surmises and conjectures....."

The Court further observed: -

F "46.A court of law must base its decision on appreciation of evidence brought on record by applying the correct legal principles. Surmises and conjectures alone cannot form the basis of a judgment."

G With regard to computation of the amount of compensation this Court held as follows: -

H "44. Indisputably, for the purpose of computation of amount of compensation a large number of factors have to be taken into consideration, namely, nature and quality of land, whether irrigated or unirrigated, facilities for irrigation like existence of well, etc. presence of fruit-bearing trees, the

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location of the land, closeness to any road or highway, the evenness thereof whether there exists any building or structure.”

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13. Since the High Court has not considered the oral evidence and also not properly analysed the documentary evidence available on record, the judgment and order passed by the High Court cannot be sustained and has to be interfered with. This is also because of the fact that the High Court proceeded on a wrong notion that the sale deeds of tiny pieces of land could be the determining factor as the land acquired in the present case is Ac. 4.98 decimals as against the sale deeds by which not even 1 decimal of land was sold. There is total misreading of the evidence on record and also misinterpretation of the legal proposition settled by this Court.

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14. Considering the entire facts and circumstances of the case, we set aside the judgment and order passed by the High Court and we are of the considered opinion that the High Court should discharge its duty and responsibility of appreciating the entire evidence on record as it is the last court of appeal in view of the provisions of Section 54 of the Act. The High Court shall appreciate the entire evidence on record and thereafter give a proper finding on the basis of both, oral and documentary evidence by taking notice of the observations made herein and thereafter decide all the issues that are raised before it by the parties.

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15. We also desire that this case requires early disposal by the High Court and, therefore, we direct the parties to appear before the High Court on 15th September, 2011 for obtaining the dates in the appeal.

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16. With the above observations and directions, this appeal is disposed of as allowed but leaving the parties to bear their own costs.

D.G.

Appeal disposed of.

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