

THAKUR KAMTA PRASAD SINGH (DEAD) BY L.Rs. A

v.

THE STATE OF BIHAR

March 10, 1976

[H. R. KHANNA AND P. K. GOSWAMI, JJ.] B

Land Acquisition Act, 1894—Sections 23 and 24—Market value—Compensation—Potential possibilities.

The respondents acquired appellant's land under the Land Acquisition Act. The Land Acquisition Officer awarded compensation at the rate of Rs. 3000/- per acre. In a reference under s. 18, the Additional District Judge enhanced the compensation to Rs. 800/- per katha (1/32 of an acre). On appeal by the State, the High Court reduced the compensation to Rs. 475/- per katha. C

In an appeal by certificate the appellant contended that the High Court was in error in reducing the rate of compensation.

Dismissing the appeal,

HELD : (1) The Additional District Judge wrongly excluded certain sale transactions on the ground that the plots in those transactions were at some distance from the acquired land. The High Court rightly held that the said transactions could not be excluded altogether from consideration. The High Court also took into account 3 other sale transactions which were relied upon by the appellant. The High Court rightly excluded from consideration certain sale deeds executed by the appellant. These transactions related to small plots of land situated on road site and were entered into after the land in dispute had been notified for acquisition. [586E—H, 587C—D] D

(2) Market value under s. 23 means the price that a willing purchaser would pay to a willing seller for 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 advantages 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. [587E—F] E

(3) 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. The finding of the High Court is based upon consideration of the evidence adduced in the case and there are no grounds to interfere with that finding. [587F—G] F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1436 of 1968.

From the Judgment and Order dated 28-9-67 of the Patna High Court in Appeal from Original Decree No. 129/62 G

V. S. Desai and B. P. Singh for the Appellant.

R. C. Prasad for the Respondent.

The Judgment of the Court was delivered by

KHANNA, J.—This is an appeal on certificate under article 133(1) H
(a) of the Constitution against the judgment of the Patna High Court whereby the appeal of the respondent State against the award of the
5—M608SCI/76

A learned Additional District Judge Arrah was allowed in part and the amount of compensation payable to the respondent in a land acquisition case was reduced.

B The respondent-State acquired 23.70 acres of the appellant's land out of plots Nos. 529 and 1262 appertaining to Khata No. 1 in village Tenduni in Shahbad district for the purpose of constructing an Irrigation Research Station. Notification under section 4 of the Land Acquisition Act (hereinafter referred to as the Act) was first published on March 8, 1957, but this notification was cancelled on December 2, 1957. Another notification for the acquisition of the said land was issued under section 4 of the Act on January 1, 1959. The Land Acquisition Officer awarded compensation to the appellant at the rate of Rs. 3,000 per acre, besides certain other amounts with which we are not concerned. The total compensation awarded by the Land Acquisition Officer came to Rs. 86,070.92. The appellant got a reference made under section 18 of the Act. Learned Additional District Judge Arrah who disposed of the reference held the market value of the land to be Rs. 800 per katha. It is stated that there are 32 kathas in an acre. On appeal by the State the High Court assessed the market value of the land at Rs. 475 per katha.

D In appeal before us, learned counsel for the appellant has assailed the judgment of the High Court and has contended that the High Court was in error in reducing the rate at which compensation had been awarded. As against that, learned counsel for the respondent-State has canvassed for the correctness of the view taken by the High Court.

E We have given the matter our consideration, and are of the view that there is no merit in this appeal. A number of documents were filed on behalf of the State to show the market value of the land in question. Those documents showed that a plot measuring .66 acres in the same village, in which the land in dispute is situated, was sold for Rs. 2,000 on March 13, 1958 at the rate of Rs. 94 per katha.

F Another sale transaction related to the sale of 22.5 decimals of land on November 22, 1958 at the rate of Rs. 58 per katha. A third transaction related to the sale of .06 acre of land for Rs. 100 on August 12, 1957 at the rate of Rs. 52 per katha. The Additional District Judge excluded these sale transactions out of consideration on the ground that the plots which were the subject matter of those sales were at some distance from the acquired land. The High Court took the view, in our opinion rightly, that these sale transactions could not be excluded altogether from consideration. The High Court also took into account three other sale transactions which had been relied upon by the appellant. Those sale transactions related to sale of five dhurs of land for Rs. 275 on October 19, 1957 at the rate of Rs. 1,100 per katha; 15 dhurs of land for Rs. 750 on November 5, 1956 at the rate of Rs. 1,000 per katha and 15 dhurs of land for Rs. 750/- on September 28, 1956 at the rate of Rs. 1,000 per katha. One katha is said to consist of 20 dhurs. The land which was the subject of these sale transactions abutted the road and, from the small size of the plots, it appears that they were purchased for the purpose of constructing

shops or similar buildings thereon. The land now sought to be acquired does not abut the road. It is in evidence that in making acquisition the strip of the land of the appellant up to a depth of 100 ft. from the road was not acquired. The High Court on taking into consideration the above three sale transactions relied upon by the appellant and three sale transactions relied upon by the respondent found the mean price of the land covered by the six sale deeds to be a little more than Rs. 460 per katha. The High Court in the circumstances came to the conclusion that the just and fair market value of the land should be assessed at Rs. 475 per katha. The above rate included, according to the High Court, the potential value of the land. In addition to that, the appellant was held entitled to 15 per cent solatium for compulsory acquisition. We find no infirmity in the above approach of the High Court. The finding of the High Court is based upon consideration of the evidence adduced in the case, and no cogent ground has been shown to us as to why we should interfere with that finding.

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We may observe that the High Court excluded from consideration certain sale deeds executed by the appellant. These transactions related to small plots of land situated on the roadside and were entered into after the land in dispute had been notified for acquisition. In the opinion of the High Court, the said sale deeds could not form a safe criterion for assessing the market value of the acquired land because they had been executed by the claimant himself after the notification. It was also observed that the plots sold were quite suitable for shop or residential purposes. We find no sufficient reason to take a contrary view.

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Section 23 of the Act provides that in determining the amount of compensation to be awarded for land acquisition under the Act the Court shall *inter alia* take into consideration the market value of the land at the date of the publication of the notification under section 4 of the Act. 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 advantages 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, its assessment of the fair market value of the acquired land should not be disturbed. No such infirmity has been brought to our notice as might induce us to disturb the finding of the High Court. The appeal consequently fails and is dismissed but in the circumstances without costs.

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