

A

STATE OF ORISSA

v.

BRIJ LAL MISRA ETC. ETC.

JULY 26, 1995

B

[K. RAMASWAMY AND K.S. PARIPOORNAN, JJ.]

*Land Acquisition Act, 1894: Sections 4(1), 23 & 24.*

C

*Land Acquisition—Compensation—Determination of—Compensation awarded taking into account the existing potentiality of land—Further enhancement of compensation taking into account future potentiality of Land held not permissible.*

D

While determining compensation for certain lands acquired the Reference Court took into account the existing potentialities of the land and awarded compensation at the rate of Rs. 200 per decimal. It further enhanced compensation at 25% for future potentialities which was upheld by the High Court. In appeals to this Court on the question whether the Courts having determined the compensation by taking into account the existing potential value were right in further enhancing the compensation at 25% for future potentialities.

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Allowing the appeals in part, this Court

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**HELD : 1.** Having taken the existing potentialities into consideration and determined the compensation at Rs. 200 per decimal, the Reference Court as well as the High Court have committed obvious illegality in applying wrong principle to award further increase at 25% more for future potentialities which is within the grinding teeth of the prohibition engrafted in Section 24, fifthly and sixthly, on the Land Acquisition Act, 1894. [358-C-D]

G

*V.N. Gajapatiraju v. Revenue Divisional Officer, Vizagaapatnam, AIR (1939) P.C. 98; P. Rama Reddy & Ors. v. Land Acquisition Officer, [1995] 2 SCC 305; Land Acquisition Officer, Eluru and Ors. v. Jasti Rohini and Another, [1995] 1 SCC 717, referred to.*

H

*Musamat Kunduna Bibi@Khatun Bibi v. State of Orissa, [1968] 34 Orissa Law Times 1043; State of Orissa through the Land Acquisition*

*Collector, Sundergarh v. Budha Oram & Ors. Etc., (1977) 2 Orissa Weekly Reporter, disapproved.* A

2. Section 23(1) of the Act charges determination of the amount of compensation for the acquired land taking into account firstly the market value of the land at the date of the publication of the notification under s.4(1) of the Act. The market value prevailing on the date of the notification including potentiality the land possessed of as on the date of the notification would be the relevant fact for consideration to determine market value. The very concept of the potential value would mean existing in possibility but not in act, i.e., the land is capable to be used in future in the existing condition. Section 24, fifthly, of the Act expressly prohibits taking into account such future use declaring such matters to be neglected in determining compensation. The Court shall not take into consideration any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired; sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put. [356-E; G-H, 357-A-B] B C D

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 704-706 of 1980.

From the Judgment and Order dated 1.8.78 of the Orissa High Court in F.A.No. 113, 114 and 115 of 1970. E

R.K. Mehta for the Appellant.

B.D. Sharma for the Respondent.

The following Order of the Court was delivered: F

These three appeals are disposed of by a common judgment since the questions of law raised are common.

A notification under s.4(1) of the Land Acquisition Act(for short, 'the Act') was published in 1968 acquiring 0.62 acre, 0.82 acre and 0.15 acre in Survey Nos. 704, 705 and 706/80 respectively for construction of over-bridge, near Vedavyas in Rajganjpur - Rourkela Road. The Land Acquisition Officer determined the compensation under s.11 of the Act between Rs. 1360 per acre to Rs. 2912 per acre. On reference, the Subordinate Judge, by award and decree dated January 19, 1970, while deter- G H

- A mining the compensation at the rate of Rs. 200 per decimal, on the basis of comparable sales which ranged between Rs. 100 to Rs. 115 per decimal, further enhanced 25% of the compensation for future potential value which was upheld by the High Court by its impugned judgment dated August 16, 1978. The only question, rightly canvassed by Shri Mehta, learned counsel
- B for the appellant is whether the courts having determined the compensation take the potential value, whether would be right to further enhance compensation at 25% more for future potentiality. The High Court placed reliance on two judgments of that court reported in *Musamat Kunduna Bibi@Khatun Bibi v. State of Orissa*, [1968] 34 Orissa Law Times 1043 and in *State of Orissa through the Land Acquisition Collector, Sundergarh v. Budha Oram & Ors. Etc.*, [1977] 2 Orissa Weekly Reporter and held thus:
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"There is immense possibility of commercial development and industrialisation in the locality in the immediate future and, therefore, the direction that potential value be estimated at twenty five per cent for purposes of compensation is justified and does not call for interference."

D

- E Section 23(1) of the Act charges determination of the amount of compensation for the acquired land taking into account firstly the market value of the land at the date of the publication of the notification under s.4(1) of the Act. The question, therefore, would be that what would be the market value of the land. The market value prevailing on the date of the notification including potentiality the land possessed of or realisable potentiality existing as on the date of the notification, would be the relevant fact for consideration to determine market value. This question was settled
- F by the Privy Council in *V.N. Gajapatiraju v. Revenue Divisional Officer, Vizagaapatnam*, AIR (1939) P.C. 98. The Privy Council held that in determining market value under s.23, the Court would be guided by ascertaining in a best way from the material on record from willing vendors. It is possibility of the market value of the land and not realised possibility that must be taken into consideration. That judgment is followed in a
- G catena of decisions of this court and held that in determining the compensation the Court would take into consideration the potentialities of the land existing as on the date of the notification published under s.4(1). The very concept of the potential value would mean existing in possibility but not in act, i.e., the land is capable to be used in future in the existing condition.
- H Having taken that factor into consideration and determined compensation

whether the court would be justified in further enhancing at 25% for further potentiality? Our answer is positively no. Section 24, fifthly, of the Act expressly prohibits taking into account such future use declaring such matters to be neglected in determining compensation. The Court shall not take into consideration any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired; sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put. In other words, the statute expressly enjoins to omit consideration of the future use of the land or potentialities of the neighbouring lands on account of the acquisition in determining compensation. In a recent judgment in *P. Rama Reddy & Ors. v. Land Acquisition Officer*, [1995] 2 SCC 305 at 314, this court considering this aspect of the matter held thus :

"...when a land with building potentiality is acquired, the price which its willing seller could reasonably expect to obtain from its willing purchaser with reference to the date envisaged under s.4(1) of the L.A. Act, ought to necessarily include that portion of the price of the land attributable to its building potentiality. Such price of the acquired land then becomes its market value envisaged under s.23(1) of the L.A. Act. If that be the market value of the acquired land with building potentiality, which acquired land could be regarded to have a building potentiality and how the market value of such acquired land with such building potentiality requires to be measured or determined are matters which remain for our consideration now."

In *Land Acquisition Officer, Eluru and Ors. v. Jasti Rohini (Smt.) and Another*, [1995] 1 SCC 717 at page 722 this Court held that :

"Section 24 of the Act puts an embargo on the court that it shall not take into consideration the degree of urgency for the acquisition; disinclination of the person interested to part with possession of the acquired land; any increase in the value of the land acquired likely to accrue from the use to which it will be put when acquired; any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put to; any layout or improvements on or disposal of the land acquired etc. without the sanction of the Collector or after Section

- A 4(1) notification was published, special suitability or adaptability of the land for any purpose or any increase in the value of the land on account of its being put to any use which is forbidden of law are opposed to public policy. Therefore, in determining the market value and fixation of the compensation, the court should be alive to these factors and keep them at the back of the mind and should not be influenced by the future or later development in the locality or neighbourhood and should not get influenced by the prevailing situation as on the date of the determination of the compensation. Its consideration should alone be confined to the market value prevailing as on the date of the notification under Section 4(1)."
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- Thus, having taken the existing potentialities into consideration and determined the compensation at Rs. 200 per decimal, the Reference Court as well as the High Court have committed obvious illegality in applying wrong principle to award further increase at 25% more for future potentialities which is within the grinding teeth of the prohibition engrafted in s.24, fifthly and sixthly, of the Act. The two decisions relied on by the High Court of that court had not correctly laid the law. While confirming the determination of the market value of Rs. 200 per decimal, which is not challenged before us, further increase of 25% is set aside. The claimants are entitled to the statutory benefits according to law. Appeals are accordingly allowed in part. No costs.
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T.N.A.

Appeals allowed.