

## **Gobardhan Mahto vs State Of Bihar on 11 January, 1979**

**Equivalent citations: AIR1979SC1246, 1979(0)BLJR120, (1979)4SCC330, 1979(11)UJ212(SC), AIR 1979 SUPREME COURT 1246, 1979 (4) SCC 330, 1979 BLJR 120, 1979 UJ(SC) 212, (1979) BLJ 271**

**Author: Y.V. Chandrachud**

**Bench: Y.V. Chandrachud, V.D. Tulzapurkar, A.P. Sen**

### **JUDGMENT**

Y.V. Chandrachud, C.J.

1. This is an appeal by certificate granted under Article 133(1)(a) & (b) of the Constitution by the High Court of Patna in First Appeal No. 539 of 1962.
2. An Area admeasuring 4.354 acres, situate in Ward No. 16 within the limits of the Patna Municipal Corporation was acquired under the Land Acquisition Act, 1894, for the purpose of the location of a Trenching Ground. The Notification under Section 4 of the Act is dated September 17, 1956 and actual possession of land was taken on November 21, 1956.
3. The Land Acquisition Officer fixed the compensation at the rate of Rs. 250 /- per Katha for arable land and at Rs. 50/- per katha for the ditch, which occupied about two kathas of land. For the well compensation was awarded in the sum of Rs. 333/- and for the trees in the sum of Rs. 5,127/-
4. In the reference to the District Judge, Patna, under Section 18 of the Land Acquisition Act, the valuation of the arable portion of the land was fixed at Rs. 375/- per katha and 1/3rd thereof was awarded for the ditch portion. The learned District Judge granted a sum of Rs. 1,000/- for the well and confirmed the compensation for the trees.
5. The claimant as also the Land Acquisition Officer filed cross- appeals in the High Court of Patna, being first appeal No. 87 of 1963 and first appeal No. 539 of 1962 respectively. The claimant abandoned his appeal and restricted himself to the claim filed by him by way of cross objections in the appeal preferred by the Land Acquisition Officer. By its judgment dated April 5, 1968, the High Court raised the compensation for arable land from Rs 375/- per katha to Rs. 450/- per katha and for the portion covered by the ditch to 1/3rd thereof, namely, Rs. 150/- per katha. Taking the view that the claim for the well was barred under Section 25(2) of the Land Acquisition Act, the High Court reduced the compensation for the well to Rs. 333/- being the amount which was awarded by the Land Acquisition Officer.

6. Learned Counsel appearing on behalf of the appellant relies on two sale deeds in support of his submission that the arable land should have been valued under Section 23 of the Land Acquisition Act at Rs. 600/- per katha. The first of these sale deeds, Ext. 1 dated May 10, 1956, was executed by one Dhanpatia in favour of Bibi Hamida Khatoon. Eight kathas of land were sold under it for Rs. 5,000/-. The other sale deed is at Ext 1/A, dated September 15, 1956 which was executed two days before the publication of the Notification under Section 4 in the instant case. By that sale deed an area admeasuring 1 katha was sold for Rs. 1,000/-.

7. It seems to us difficult to accept these two sale deeds as affording evidence of comparable instances for the purpose of valuing the land which has been acquired in this case. In the first place the acquired land has been generally described and considered as 'parti' land, which shows that it was lying waste and unused for many years. Secondly, about 2 kathas from out of the land are occupied by a ditch on which, according to the evidence in the case, a deep rain water accumulates during the monsoon. Thirdly, the land which is adjacent to the land in question was being used for dumping garbage and for some time as a trenching ground. Lastly, the evidence of Chandeshwai Prasad, the Kanungo, shows that the acquired land was not fit for being used for building purposes and that it was situated at some distance away from the locality in which there was evidence of building activity. The acquired land is thus not comparable with the land sold under Ex. 1. As regards the sale-deed Ex. 1/a, the land sold under it was a small piece measuring 1 katha and it cannot reflect the true market value of lands in the locality.

8. It is urged by the learned Counsel that, at any rate, there was no justification for the High Court for reducing the compensation awarded for the well. The short answer to this contention is to be found in the provisions of Section 25 of the Land Acquisition Act. By Sub-section 1 of that section, when an applicant makes a claim to compensation pursuant to a notice given to him under Section 9, the amount awarded to him by the court shall not exceed the amount so claimed. By Sub-section 2 of Section 25, when the applicant has refused to make such claim or has omitted without sufficient reason to make such claim, the amount awarded by the court shall in no case exceed that amount awarded by the Collector. It is common ground that in pursuance of the notice given under Section 9, the appellant contented himself by saying that there was a deep and wide well on the land. He did not ask for any specific amount as representing the value of the well. The learned District Judge would appear to have overlooked the provisions of Section 25(2) and in any case, his judgment does not show that he had come to the conclusion that the appellant was prevented by any sufficient reason from making a claim for compensation in respect of the well.

9. For these reasons we affirm the judgment of the High Court and dismiss the appeal with costs.