Jharkhand High Court
State Of Bihar (Now Jharkhand) vs Deo Sharan Prasad on 10 September, 2004
Equivalent citations: 2004 (4) JCR 323 Jhr
Author: V Prasad
Bench: V Prasad
JUDGMENT Vikramaditya Prasad, J.

1. This appeal has been preferred by the State of Bihar against the order dated 29.5.1990 passed by the Sub-Judge, Garhwa under Section 18 of the Land Acquisition Act, (hereinafter referred to as the Act), whereby and whereunder, for 92 decimals of acquired land of the respondent for Danro Jalashai Yojna Panghtwa, was valued at Rs. 12.000/- two mahua trees were valued at Rs. 1000/-. besides additional compensation a 30% with interest @ 9% from the date of acquisition was directed to be paid to the respondent.

2. The State has pleaded that the land acquired was Tanr land, but the Court ignored this fact and taking into consideration the price of the piece of a small acquisition of 11 decimals of land. (Ext. 1), the Court fixed the valuation. Moreover, the Exts. 1 and 2 were the sale deeds of the year 1992. much subsequent to the date of acquisition and therefore, they should not have been taken into consideration, besides it was wrong on the part of the Court to. hold that no survey khatian had been filed by the respondent. With regard to the mahua trees, it was stated by the appellant that their existence is not supported by . evidence on record.

The respondent has also filed a cross-objection claiming that the valuation as fixed by the Court below @ Rs. 12.000/- per acre and that of the mahua trees Rs. 1000/- is against the weight of the evidence and the rate should have been Rs. 180/" per decimal and Rs. 3000/- for each of the mahua trees.

3. Undisputedly, the notification under Section 4 of the Act, has been issued sometimes in the year 1980. Neither of the parties has given the exact date. On perusal of the lower Court records, it transpires that the award was prepared by the Collector as per the declaration No. 441, dated 27.8.1981, 92 decimals of land of the respondent, Deo Sharan Prasad. was acquired. On perusal of Collector's award, it is found that the plot number, khata number are given in it but the nature of the land is not mentioned. It shows that the land was in the village Dandai and the award given by the Collector was for Rs. 2930.00 for the land, for trees Rs. 148.00. additional compensation Rs. 923.61. additional compensation as per new amendment under new Act @ 44% amounting to Rs. 1354.00 and it was made after local inspection. It also shows that in respect of the trees, Rs. 148.50 was awarded. Thus, it also shows that there were trees on the land acquired. the copy of the khatain of the village concerned is also on record, which shows that it is Tarn II land. No oral evidence was adduced by the appellant before the Court below.

4. The case of the respondent before the Land Acquisition Officials was that the land was three crop bearing land yielding paddy, wheat, vegetables etc., besides near the land there was a well, which was used to irrigate the land, which used to yield 50-55 Maunds of paddy, 30-40 Maunds of wheat and 60 Maunds of potato, besides 2 mahua trees thereon was yielding 3 Maunds of mahua and

consequently, after acquisition of the land the respondent has suffered a great loss. His further case was that the Government officials and the Land Acquisition Officers were displeased with him; therefore, instead of valuing that land at Dhan II land rate, they have valued it on the basis of class Tarn II land and they have also not given valuation of mahua trees. The produce were sulcl in the market, Therefore, he claimed Rs. 18.000/- as the valuation of the land and Rs. 6,000/- for mahua trees totaling Rs. 24,000/- as against Rs. 5366.94 awarded to him. In support of its case, as stated, no evidence was adduced by the Stale but from the side of the respondent, three witnesses were examined and sale deeds were also exhibited.

CW 1 is the witness of the same village. He has stated that the land in question was yielding three crops in a year and the respondent had got income from that. He was examined in the year 1987 and said that about 7-8 years back. the land in the village used to be sold @ 18.000/- 20.000/-per acre. He also said that he has his land in that very village. His evidence practically on yield and the approximate rate of land was ex parte, as no cross-examination was made on those points by the appellant.

CW 2, Ram Das Bishwakarma, is also a man of that very village. He supported the ease of the claimant that the land nearby the acquired land was sold @ Rs. 1000/-2000/- per khata. Me also said that about 10 years back in the year 1989 the same land in the village used to be sold at Rs. 18.000-2000/- per acre. He said that the claimant got income from the mahua trees standing thereon. In his cross-examination, he said that in the year 1982, 1.5 decimal of land was sold for Rs. 2500/- and he had purchased in the year 1972 18 decimal of land for Rs. 1100/-. Thus, in the year 1972 about 9 years prior to the acquisition. for Rs. 1100/- 18 decimal of land was sold, meaning thereby one decimal of land was sold @ about Rs. 60/- per decimal and in the year 1982, 1.5 decimal of land was sold at Rs. 1650/- which means Rs. 16500/- per acre but no document is there in support of this statement.

Then CW 3 is the another witness of the same village who also corroborated the claim of the respondent that the land used to yield three crops and the land is a dhankhet and in the year 1981 the land used to be sold at Rs. 800/- per khatta and on this land there were two mahua trees having valuation of Rs. 6000/-. In his cross-examination, he says that the sale about which he spoke in his examination-in-chief was in his presence as he said that 9 decimal of land was sold at Rs. 1800/-. In his cross-examination, he further stated that near the land there is a pond which was used for irrigation.

5. The claimant has supported his case and said the same thing as he stated earlier. In the cross-examination, he said that the land was not classified after physical verification. He said that he had produced two sale deeds to the Land Acquisition Officer, but these were not considered-the first one was of Shri Kumar and the second was of the claimant and both the deeds were of the year 1981. He declined to accept a suggestion that he does not know whether in the Survey Khatian the land was recorded as Tanr. He claimed that 15 years back, he had converted Tanr land into dhan land, meaning thereby according to him the land at the time of acquisition had changed its feature and had been converted into dhan land though in kbatian it was recorded as Tanr land. Ext. 1 is a deed executed in the year 1983. The land is the Tanr II and was sold by one Abdul Sakhu to one Murii

Prasad by it, 11.04 decimal of land was sold for Rs. 2000/- in the village Dandhi. the village of acquisition of the land, meaning thereby @ Rs. 190/- per decimal. Then by Ext. 2. a piece of land was sold by Bhutan Mahto to this claimant in the year 1982 for Rs. 2900/-. In this case. 11.05 Dhan III land was purchased at Rs. 2900/- Thus, according to this, Rs. 250/- per decimal. No other evidence has been adduced on behalf of the claimant.

6. From the aforesaid facts discussed above, it is found that even in the year 1983 as per the Ext. 3, Dhan III land was being sold @ Rs. 250/- per decimal. The appellant has taken a plea that the learned Court below should not have believed Exts. 1 and 2 as the document was of the year 1991. I find that this is not a correct plea because Ext. 2 was of the year 1982 and Ext, 1 of 1983. Therefore, this document was executed sometimes earlier or after the acquisition of land. Then if the learned Court below relied upon these two documents for determining the valuation of the acquired land, it did not commit any error, particularly when it has not been shown that these documents do not reflect bonafide transactions.

7. As found from the facts stated that the valuation of the trees was also made at Rs. 1000/-. This shows that the appellant admits that there were trees on the land concerned. There is no evidence adduced by the appellant that the land classification was made in presence of the claimant and rightly recorded and consequently, it was valued as Tanr II land. Even in the Khatian prepared long ago, if the land is recorded to be of a particular class, it cannot be said that many years thereafter the land did not change its nature, form and class. Thus, after many years, the land which was Tanr lands can be ploughed and cultivation can be done on it with the advancement of time. In this case, there is cogent evidence that the land was irrigated was producing three staple crops. It was converted into dhankhet. All these evidence have not been demolished by the appellant; therefore. I have no difficulty in holding that at the relevant time of acquisition in the year 1981-82. The land in question had lost the feature of Tanr and had been converted into dhan land. The claimant has claimed his land as Dhan II whereas Ext 2 is in respect of Dhan III land. On perusal of the impugned judgment, it transpires that the learned trial Court considered the fact that at the relevant time, the land used to be sold at Rs. 18,000-20,000/- per acre and therefore, the valuation of the land should have been assessed on the basis of the prevailing market rate and therefore, he fixed at Rs. 12.000/.

8. After going through Ext. 3, I find that it shows Rs. 250/- per decimal for the Dhan III. According to the claim of the claimant, his land was converted into Dhan II land. It is simply a claim and no evidence is there. Therefore. I will also start presuming that even though the Tanr land was converted into Paddy land and the Dhan III land was being sold in the year 1982 @ Rs. 250/- per decimal, then one year prior to the acquisition of the land the rate' was like this. It is Important to note that the value of the land escalates with the passage of time. As per the Ext. 2. in the year 1982, such land was being sold @ Rs. 250/- per decimal, so In the year 1981, after taking 10% depreciation, it comes to Rs. 225/- (Rs. 250-25). Out of 92 decimals of land. The claimant claims 89 decimals of land dhan land and as such, the amount of valuation of the land would be Rs. 225/- x 89 = Rs. 20025/- + 3 decimal Tanr land. The valuation of which, according to Ext. 1. will be Rs. 190/- 3 =; 570/- and thus, the total valuation comes to Rs, 20595/-. The learned trial Court, though relied upon Ext. 3, yet his calculations were not mathematical and in all circumstances, Rs. 12.000/-could not have been the valuation because on what basis the valuation was arrived Is not clear from the

judgment, as it does not appear to have been based on Exts. 1 and 2, True it is that the valuation of small piece of land should not be the only factor, but the crops obtained vis-a-vis the prevailing rate are the circumstances that cannot be ignored.

9. So far as the mahua trees are concerned, the existence of that is admitted and Rs. 148.50 was the valuation made for it by the Collector and the claim for this Rs. 6000/-. As the claimant in his cross-examination has claimed the value of the land @ Rs. 180/- per decimal, the valuation will be Rs. 16560/- for the land and the value given for trees as given by the trial Court is not unjustified because no documentary evidence has been shown as to the amount of damage on account of the trees under Section 23(2) of the Act shall be Rs. 1000/-.

10. Thus, it is held that the respondent is entitled to an award of Rs. 16560/-for the land Rs. 1000/- for the trees with other statutory rate of interest solatium and interest @ 9% on the excess of the valuation fixed in the appeal till the payment. Appeal Is dismissed, cross objection allowed on contest.