

Comunidade of Murad Vs. Additional Deputy Collector and Land Acquisition Officer

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Court : Mumbai

Decided On : Feb-19-1997

Reported in : 1997(4)ALLMR566; (1997)99BOMLR646

Judge : T.K. Chandrashekhara Das and R.M.S. Khandeparkar, JJ.

Appeal No. : First Appeal No. 38 of 1990 and Miscellaneous Civil Application No. 387 of 1996

Appellant : Comunidade of Murad

Respondent : Additional Deputy Collector and Land Acquisition Officer

Disposition : Appeal dismissed

Judgement :

T.K. Chandrashekhara Das, J.

1. An area of 34,322 sq. mts. of land belonging to the appellant in survey No. 115 (part) in village Murda, for the purpose of alignment of N.H. 17 was sought to be acquired under a Notification under Section 4(1) of the Land Acquisition Act, 1894, which was published in the Gazette dated 16th January, 1984. The Land Acquisition Officer passed Award dated 29th March, 1985 awarding compensation

of Rs. 20/- per sq.mt. to the appellant. Dissatisfied with the Award of the Land Acquisition Officer, the appellant sought a Reference before the Additional District and Sessions Judge, Panaji, in Land Acquisition Case No. 79/85. The Reference Court dismissed the reference by Award dated 4th January, 1990, holding that there was no material before to enhance the compensation. This Appeal arises out of the said Award, at the instance of the claimant.

2. Before the Court below, an attempt was made to prove the market value of the land by examining three witnesses, A.W. 1, attorney of the appellant, A.W. 2, one of the tenants of the portion acquired and A.W. 3 Rui Ribeiro Santana, who is said to be an expert valuer. Though two sale instances as Exh. A.W. 1/B and A.W. 1/C had been produced before the Court below, the lower court rejected those sale deeds on the ground that the lands covered under the sale deeds are land suitable for residential purposes, whereas the land under acquisition was admittedly an agricultural land and included in the zone of agriculture prepared by the Town and Country Planning Department and cannot be comparable with the acquired land. Therefore, the oral evidence adduced has been rightly rejected by the Court below.

3. Before we proceed to analyse the impugned award, we have to address ourselves to another question as to whether under the facts and circumstances of the case this Court can, in exercising its Appellate jurisdiction admit additional evidence. The appellant herein has filed an application before this Court as Miscellaneous Civil Application No. 387/96 whereby the appellant is seeking to produce two Awards passed by the Court below subsequent to the date of the impugned Award, one Award in Land Acquisition Case No. 88/85 dated 11th March, 1993 and another in Land Acquisition Case No. 42/88 dated 29th September, 1994. Admittedly, these Awards came into existence after the impugned Award. The learned Advocate General appearing for the State, has vehemently opposed the application and contended that a document which was not in existence at the time of the decree of the lower court cannot be allowed to be produced at the appellate stage as additional evidence under Order 41 Rule 27(1)(b) of the Civil Procedure Code. On the other hand, the learned Counsel for the appellant, Mrs. Agni, has argued that under Order 41 Rule 27 of the Civil

Procedure Code a document which could not be produced earlier can be entertained at the appellate stage. The learned Counsel for the appellant has contended that the lower court is not justified in dismissing the reference because the lands covered under the same Notification acquired for the same purpose situated in the same stretch of alignment were given enhanced compensation and the rejection of the reference application of the appellant by the lower court is therefore arbitrary and illegal. The documents sought to be produced relate to the lands under same notification situated in the stretch of land in the same alignment. In order to examine the rival arguments of the learned Counsel for the appellant and the learned Advocate General, we have to refer to the relevant provisions of the Civil Procedure Code. Order 41 Rule 27 of the Civil Procedure Code reads as follows :-

27. Production of additional evidence in Appellate Court - (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if-

(a) the Court from whose decree the appeal is preferred has refused to admit, or.

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) The Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or any other substantial cause, the Appellate Court may allow such evidence or document to be produced or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

Regarding the admissibility of evidence at the appellate stage under Order 41 Rule 27 of the Civil Procedure Code, the learned Counsel for the appellant Mrs. Agni, argued relying on a decision in 'MM. Quasim v. Manohar Lal Sharma and Ors. :

[1981]3SCR367 Rent C.R. that subsequent events can be taken into account by the Appellate Court and on that count the Award passed by the lower court though subsequent to the passing of the decree impugned, which has bearing or relevance on the case in hand, can be admitted as evidence at the appellate stage. The learned Counsel relied on para 15 of the judgment which inter alia reads as follows:-

To sum up, there was a proper and regular application to meet with the requirements of Order 41 Rule 27, C.P.C. for additional evidence inviting the Court's attention to a subsequent event of vital importance cutting at the root of the plaintiffs right to continue the action. Coupled with it, there was evidence in the form of a certified copy of the decree showing that the plaintiffs, even if they had some shade of title to commence action, they having lost all interest in the property and the property having become one of exclusive ownership of a person not a party to the proceedings, were no more entitled to continue the proceedings for their own benefit.

We are afraid how this decision is helpful to the case of the appellant. The Supreme Court in that case was mainly concerned about the subsequent event which has taken place after the passing of the original decree. In other words, a subsequent event can always be considered which materially affects the subject-matter of the dispute itself. Therefore, in such circumstances, the Supreme Court has said that subsequent event has to be taken into account by the Appellate Court. In this case, there is no such change or occurrence of subsequent event as regards the subject-matter of the proceedings is concerned. Therefore, we do not find that the aforesaid decision could be applicable in the case in hand. Mrs. Agni then cited another decision of the Supreme Court in Billa Jagan Mohan Reddy and Anr. v. Billa Sanjeeva Reddy and Ors. : [1994]1SCR429 . Therein the Supreme Court was dealing with an entirely different situation. In that case, the documents were in possession or custody of the the authority at the time passing of the decree and the party knew that such document was in existence but the party would not get the certified copy to be produced before the passing of the decree. After obtaining the certified copy from the Revenue Authority, the said document was sought to be produced as additional evidence at the appellate stage. In such

circumstances, the Supreme Court has held that in the interests of justice the Appellate Court is entitled to entertain the additional evidence under Order 41 Rule 27 C.P.C. The learned Counsel also cited another decision of the Supreme Court in the case of Pal Singh and Ors. v. Union Territory of Chandigarh : AIR 1993 SC225 . This decision mainly deals with the relevancy of an Award passed by the Reference Court in another proceedings relating to land acquisition. But it is clear in that decision that the Award in question which was sought to be produced was relating to the previous proceedings. It is relevant to note the observation of the Supreme Court in para 5 which reads :-

But what cannot be overlooked is that for a judgment relating to value of land to be admitted in evidence either as an instance or as one from which the market value of the acquired land could be inferred or deduced, must have been a previous judgment of Court and as an instance, it must have been proved by the person relying upon such judgment by adducing evidence aliunde that due regard being given to attendant facts and circumstances, it could furnish the basis for determining the market value of the acquired land. In the case on hand, the petitioners who are claimants claiming enhanced compensation for their acquired land have not produced the judgment of the High Court on which they propose to rely for finding the market value of their acquired lands as evidence in their cases, in that they could not have done so for the reason that it was not a judgment then available to them as a previous judgment relating to market value of the land in the vicinity.

On a close leading of these decisions discussed above, we have no hesitation to hold that these decisions have no relevance to the question that we are called upon to decide. The learned Advocate General has rightly argued that in order to attract the provisions of Order 41 Rule 27(1)(b) the documents in question must be in existence at the time of passing the decree by the court below. We see that in the provisions of the Civil Procedure Code the circumstances have been described to allow the Appellate Court to entertain additional evidence in very limited scope. A legislative policy that a lethargic client or a party who wanted to unnecessarily delay the proceedings by way of seeking additional evidence at the appellate stage has been completely sought to be prevented from circumscribing the

circumstances under which the additional evidence could be adduced at the appellate stage. The Supreme Court, however, in *M.M. Quasim v. Manohar Lal Sharma* (supra) emphatically laid down that such a limitation put to the party to produce evidence at the appellate stage should not thwart the interests of justice. The basic principle that is discernible under this provision is that in order to implement the legislative policy the interest of justice should not be thrown to wind. The Supreme Court in the case supra cited was quoting a passage of Justice Krishna Iyer in *Pasupuleti Venkateswarlu's* case as under :-

It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the list has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the discretely remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice - subject, of course, to the absence of other disentitling factors of just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice....

We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.

One important aspect imposed by the Supreme Court is that the bundle of facts in order to decide the case by the Court must be in existence on the date of the suit. Subsequent events which bring out the material bearing on the subject matter of the suit or effecting the circumstances under which the suit had been filed may be taken note of by the Appellate Court in assessing the judgment of the lower court.

In our view the Supreme Court was definite on the discipline sought to be imposed on the litigant by the statute. The limitations imposed by Order 41 Rule 27 Civil Procedure Code are clear. In order to invoke the power of the Appellate Court to entertain additional evidence the following three points must be considered:-

1. The evidence sought to be produced must have been refused to have been admitted in evidence by the court below;
2. The party who seeks to produce the evidence should establish that in spite of his exercise of due diligence he had no knowledge about the existence of the document during the pendency of the litigation or at the time of passing of the decree; or
3. He was unable to produce such a document even after exercise of due diligence, or the Court must be satisfied that without the entertainment of additional evidence the Court is not in a position to pronounce judgment. That means the court must feel that it is inevitable necessary to entertain the document to enable it to come to a conclusion; or for the protection and interest of substantial cause of justice.

If any one or more of the above circumstances is not made out before the Appellate Court, the Appellate Court cannot entertain additional evidence. The irresistible conclusion deducible on the above discussion is that in any circumstances envisaged under Order 41 Rule 27(1)(b) the documents sought to be produced at the appellate stage must be in existence during the pendency of the suit or at least at the time of the passing of the decree, unless the documents came into being affecting the subject-matter of the suit itself. Here we see the document sought to be produced only came into existence subsequent to the decree impugned in this appeal. Therefore, for that reason alone we are not inclined to allow the application for producing additional evidence in this case.

4. Now we come to the facts of this case. As we already mentioned, there is absolutely no evidence before the Court below to assess the market value of the land. Two sale deeds produced have not been proved in the manner envisaged under law. Therefore, these sale instances could not have been taken into account

by the court below. The learned Counsel for the appellant, Mrs. Agni, has argued that the land has building potentiality. She argued, relying on the deposition of A.W. 2 and A.W. 3 that building activities are going on in and around the acquired land. The land is situated near the town. Therefore, the building potentiality is very much there as regards the acquired land is concerned and this building potentiality as proved in this case has not been taken into account by the court below. We cannot agree with this argument of the learned Counsel for the appellant. As pointed out by the learned Advocate General, there was a statement of the claimant himself in his examination-in-chief that all those lands are tenanted lands. It has come out in evidence that the lands are mainly agricultural lands though for some recent years cultivation could not be carried out because of the inflow of saline water. The learned Advocate General has contended that the presence of a tenant in the agricultural land is a taboo for the marketability of the land. Normally a tenanted land will not fetch a normal market value of the property. It has been held by the Supreme Court in *M.B. Gopala Krishna and Ors. v. Special Deputy Collector, land Acquisition* : [1996]2SCR248 as follows :-

A freehold land and one burdened with encumbrances do make a big difference in attracting willing buyers. A freehold land normally commands higher compensation while the land burdened with encumbrances secures lesser price. The fact of a tenant in occupation would be an encumbrance and no willing purchaser would willingly offer the same price as would be offered for freehold land.

Then, the learned Advocate General also pointed out to us that the land in question was included in the agricultural zone according to the plan prepared by the Town and Country Planning Authorities. He also pointed out that under Section 43 of the Goa, Daman and Diu Town and Country Planning Act, 1974, a prohibition is imposed on the development of a land without the permission of the authority.

Section 44(4) of the said Act deals with permission in dealing with applications by the Planning and Development Authority and says that the Planning and Development Authority shall have regard to the provisions of any Development Plan; to the proposal or provisions which it thinks are likely to be made in any

Development Plan under preparation or to be prepared; the relevant bye-laws or regulations of the local authority concerned and any other material consideration. So, these restrictions are imposed on a land which required conversion. Therefore, it goes without saying that the land in question is an agricultural land lying below the road level about 1 ml. which requires filling. Not only the statutory impediment in converting the land into a building site, but expenses of filling of the land also have to be considered. All these factors necessarily go a long way to the disadvantages of the acquired land. Even though by oral and documentary evidence these disadvantages have been proved, no other advantageous factors and no other material justifying enhancement of compensation which the court can safely rely upon finds place in the record of this case. Therefore, the lower court is fully justified in rejecting the claim of the appellant for enhancement of compensation. Even though the counsel for the appellant has taken us elaborately through the evidence of A.Ws. 1, 2 and 3 and the Valuer's report, we cannot give any credence to these materials which in fact, in no way enable us to enhance the market value of the land acquired.

5. In the result, the appeal is dismissed. For the reasons stated above, the Miscellaneous Application No. 387/96 is also dismissed.

6. In the circumstances of the case, there shall be no order as to costs.