

State of U.P. Vs. Babu Ram (Deceased by Lrs.) and Others Etc.

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SooperKanoon Citation : sooperkanoon.com/447467

Court : Allahabad

Decided On : Aug-16-1994

Reported in : AIR1995All2

Judge : S.C. Mohapatra and ;D.K. Trivedi, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 4(1), 18, 19, 23, 23(1-A), 48-A and 49-A; [Code of Civil Procedure \(CPC\), 1908](#) - Order 41, Rule 33; Land Acquisition (Amendment) Act, 1984 - Sections 23 and 28

Appeal No. : First Appeal Nos. 479 to 482 of 1985

Appellant : State of U.P.

Respondent : Babu Ram (Deceased by Lrs.) and Others Etc.

Advocate for Def. : L.P. Singh and ;D.P. Bahadur, Advs.

Advocate for Pet/Ap. : Standing Counsel

Judgement :

1. These four appeals by State of Uttar Pradesh arise out of a common judgment which has made awards in references made to court under Section 19 of the Land Acquisition Act. Accordingly, the four appeals were heard together.

2. Lands of various owners were acquired in the same village under the same notification published under Section 4(1) of the Act. After series of previous

litigations, ultimately the references bearing numbers 8, 9, 10, 11 and 68 of 1983 reached the trial Court for determination of the compensation. Trial Court having determined compensation in all the five references at one rate, State Government has preferred these four appeals.

3. At the commencement of hearing Sri Verma, learned counsel for the respondents in all the four appeals raised a preliminary objection that appeal not having been filed challenging the award in reference case No. 9 of 1983 Chandra Deo v. State of U. P., there is no scope for interfering with the judgment. After verification from the office of the Chief Standing Counsel, learned Standing counsel has intimated us that in fact no appeal has been filed in respect of the award in reference case No. 9 of 1983.

4. It is to be considered whether there is any scope for interference with the awards given in the four appeals for which one common judgment was delivered.

5. Market value is determined on the date of notification under Section 4(1) of the Act. Under Section 23 for determination of the market value exemplars of contemporaneous transactions in respect of land having similar advantages have the evidenciary value. Previous awards have also evidenciary value to consider the question of market value. When in respect of one of the land owners, compensation has been awarded at a rate which is same as in respect of other owners of the land acquired under the same notification in the village, it can be presumed that acquired lands of the various owners have similar advantages. Accordingly, when market value as determined in one reference which has become final in absence of any appeal, the same rate would also govern the land of other owners. Thus, there is force in contention of Mr. Verma in the preliminary objection.

6. Mr. Verma, learned counsel for the respondents urged that the claimants are entitled to compensation under S. 48-A of the Land Acquisition Act as amended in U. P. No cross objection has been filed in respect of this claim. An application has been filed for exercise of power under Order 41 Rule 33 C.P.C. Entitlement of damages does not await the consequential result under statutory provision, Court has no duty to award the same automatically. This is not also a pure question of

law. A perusal of Section 48-A does not leave any doubt that for award or damages it is necessary to be considered whether a land owner is negligent and there is delay in making award on account of his conduct. He may not be entitled to any damages under Section 49-A (if) it is found that he is negligent. These facts are wanting in the present appeal. Therefore, in absence of cross objection the relief cannot be granted to the land owners in an application under Order 41 Rule 33 CPC. The application is, accordingly, rejected.

7. Statutory benefits under the Land Acquisition Act like solatium and interest stand on a different footing. It is the duty of the Court to award the available statutory benefits even though no appeal or cross objection has been preferred. Mr. Verma submits that after the appeals were filed Land Acquisition Act has been amended by Act No. 68 of 1984 and, therefore, land owners are entitled to higher rate of solatium, compensation under Section 23(1-A) as well as interest at the rate of 9% for the first year and 15% for subsequent years. This aspect of the matter has not been considered by the trial Court. Accordingly, while affirming the market value determined by the trial Court, we direct the trial Court to consider the question of the statutory benefits under Sections 23 and 28 of the Land Acquisition Act as amended by Act No. 68 of 1984, if an application to that effect is made.

8. In view of the aforesaid discussions, there is no merit in these four appeals which are, accordingly, dismissed.

9. There shall be no order as to costs.

10. Appeals dismissed.