

State of U.P. Vs. Kalu

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Court : Allahabad

Decided On : Oct-23-2003

Reported in : 2004(1)AWC276

Judge : Onkareshwar Bhatt, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 4, 18 and 23

Appeal No. : First Appeal No. 31 of 1976

Appellant : State of U.P.

Respondent : Kalu

Advocate for Def. : K.R. Sirohi and ;B.D. Tripathi, Advs.

Advocate for Pet/Ap. : Shreesh Chandra, S.C.

Disposition : Appeal dismissed

Judgement :

Onkareshwar Bhatt, J.

1. State of U. P. has filed this appeal against the judgment and order dated 30.9.1975, passed by the then 1st Additional District Judge, Meerut in Land Acquisition Reference No. 267 of 1973.

2. Sri Shreesh Chandra, learned standing counsel for the appellant and Sri K.R. Sirohi, learned counsel for the respondent have been heard.

3. The Avas Evam Vikas Parishad, Lucknow, moved the State of U. P. for acquiring 25 bighas 10 biswas 1 biswansi land for construction of houses in its scheme No. 4 of Mohanpuri Bhumi Vikas Yojana, Meerut. Notification under Section 4 of the Land Acquisition Act was published on 7.1.1967. Notification under Section 6 of the Act was published on 28.3.1968. The land of respondent bearing plot No. 5271 admeasuring 593.21 sq. yards was also acquired along with the land of several others. The possession of land was taken on 3.1.1970. The Special Land Acquisition Officer gave his award on 28.3.1970. The land was divided into three belts and compensation (c) Rs. 7 per sq. yard was given for land of belt 'A'. Admittedly the land of the respondent falls in belt 'A'. The reference court has given compensation @ Rs. 12 per sq. yard.

4. The belting system of the land has been rejected by the reference Court for good and valid reasons given in the judgment. In the reference Court parties have not led any oral evidence but they relied on sale deeds.

5. The Special Land Acquisition Officer determined the compensation on the sale deed dated 21.2.1964 executed by Bhagirath in favour of Jagdish Singh of plot No. 5305 measuring 469.1/3 sq. yards for Rs. 4,927.50. The rate comes to Rs. 10.50 per sq. yard. The reference Court did not accept the sale deed for determining the compensation as it was too remote from the date of notification under Section 4 of the Act. The other sale deed which has been filed is of Jai Pal Gupta dated 29.11.1967. by which 186 sq. yard of plot No. 5231 was transferred to Smt. Murti Devi for Rs. 4,929. The other sale deed is dated 11.5.1964, executed by Mahabir Singh by which 200 sq. yards of plot No. 5231 was sold to Angoori Devi for Rs. 3,000. The other sale deed is of 19.8.1964, by which Bhagirath Singh sold 593.21 sq. yard of plot No. 5271 to Kalu Singh for Rs. 8,305. The last sale deed is of 18.3.1967, by which 300 sq. yard out of plot No. 5248 was sold to Bhagwan Dutt Sharma for Rs. 4,500. The reference Court found that the exemplar's sale deeds show trend of rise in price of land between 1964 to 1967. The sale deed of Jai Pal Gupta related to small piece of land and it was far away from the acquired land.

The reference Court has accepted the sale deed executed by Mohan Lal on 18.3.1967 because it was executed only two months after the notification under Section 4 of the Act. In the case of *Tata Chemicals Ltd. Bombay v. Sadhu Singh and Ors.* 1994 (2) AWC 982 : AIR 1994 All 66, it has been held that where market is stable and there is no fluctuation in the prices between the date of notification under Section 4 of the Act and the subsequent transaction exemplar of a date which is subsequent to the date of notification under Section 4 of the Act can be considered. The sale deed of 18.3.1967, relates to plot No. 5248 and it is near the land of plot No. 5271 which is of the respondent. The situation of plot Nos. 5271 and 5248 is similar. Nothing has been brought out to show that the sale deed executed by Mohan Lal was in any way fictitious or was for inadequate consideration. The sale deed gives the rate of Rs. 15 per sq. yard. The reference Court after minimising the development charges, reduced the rate by 20% and found the respondent entitled to compensation @ Rs. 12 sq. yard which cannot be said to be excessive.

6. The reference Court has not awarded solatium to the respondent. In the case of *Nagar Mahapalika, Agra v. Kalawati Devi*, AIR 1976 All 40, it has been held that the claim for 15% solatium is a statutory right to additional compensation which an objector can claim for compulsory acquisition. Merely because this question was not taken up earlier would be no ground to deprive the citizen of his statutory right to receive the compensation. It is a pure question of law on admitted facts which can be taken up in appeal though not raised earlier.

7. In the result, it is directed that in addition to the compensation awarded to the respondent by the reference Court the respondent shall be entitled to solatium @ 15% on the enhanced amount of compensation fixed by the reference Court from the date possession of the land was taken till the date of payment or the date of deposit in the Court.

8. With the above modification in the impugned judgment the appeal is dismissed. The respondent will get cost of the appeal.