

Saunu Vs. the Collector, Land Acquisition, B.S.L., Mandi, (H.P.)

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Court : Himachal Pradesh

Decided On : May-03-1982

Reported in : AIR1982HP118

Judge : Vyas Dev Misra, C.J. and; H.S. Thakur, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 23 and 28

Appeal No. : First Appeal No. 19 of 1970

Appellant : Saunu

Respondent : The Collector, Land Acquisition, B.S.L., Mandi, (H.P.)

Advocate for Def. : Inder Singh, Adv. General

Advocate for Pet/Ap. : Kedar Ishwar, Adv.

Judgement :

V.D. Misra, C.J.

1. This appeal is directed against the award given on a reference under Section 18 of the Land Acquisition Act by the Additional District Judge, Matidi.
2. By a notification dated 4th Dec., 1965, issued under Section 4 of the Land Acquisition Act, the Government acquired land measuring 20-15-4 bighas situated in village Kalauhad, Tehsil Sundernagar. This land belonged to the appellant. The

appellant was not satisfied with the amount of compensation awarded by the Land Acquisition Collector. He asked for reference which was made. After recording the evidence produced by the parties, the learned Additional District Judge came to the conclusion that the compensation awarded by the Collector cannot be termed unreasonable.

3. Mr. Kedar Ishwar, learned counsel for the appellant, contends that the Court was not justified in rejecting the revenue mutations produced by the appellant as evidence for determining the market value of the acquired land. He also makes a grievance of the fact that the Court should not have relied upon the mutations produced on behalf of the Collector. Mr. Inder Singh, learned Advocate-General, submits that the appellant was in the position of a plaintiff and the onus was on him to show the market value of the land. It is submitted that the appellant remained satisfied with producing copies of the mutations without proving the actual sales covered by them.

4. The mutation can only prove the factum of sale but it is no evidence of the price paid. Nor it would prove that the sale was effected by a willing seller and a willing purchaser. Even the purpose of buying the land would not be proved by it. A Division Bench of this Court in *Union of India v. Paras Ram*, ILR (1979) Him Pra 305, had an occasion to lay down what is necessary in order to prove the instance of sale on the basis of which the market value of the land acquired could be assessed by the District Judge. It was observed :

'It is undoubtedly true that one of the most approved methods of fixing market value of the acquired land under Section 23 of the Land Acquisition Act is to find out the instances of sale of the adjacent lands which could stand comparison with the acquired land. But if the compensation is required to be fixed on the basis of such instances of sale then these instances of sale should be found to be the instances of genuine and real sale between a willing buyer and a willing seller. It is, therefore, very much necessary to know what considerations weighed with the willing buyer to pay the price in question and what considerations weighed with the seller to receive that price. Moreover, the quality, location and potentiality of such lands should stand comparison with the acquired land. Therefore, when instances

of sale of the comparable lands are to be relied upon, the Court is bound to consider all these various factors before utilising them for evaluating the acquired land. If such material is not found in the record of the case, and compensation is based merely on revenue entries which show nothing more than the fact that a particular piece of land was sold at a particular price, the record of the case would be devoid of any evidence to show that the instances so relied upon were the instances of genuine sale between a willing buyer and a willing seller, or that the lands sold could stand comparison with the land acquired.'

The Bench also observed :

'It, therefore, follows that mere proof of factum of sale through instances of sale of other properties cannot supply any dependable evidence for determining the market price of the acquired land. It need not be emphasised that a sale may be a forced sale or an accommodation sale or even a speculative sale. It may well be a sale wherein the purchaser would have some special reason to pay fancy price or the seller would have some other special reasons to dispose of his property at a throw away price. All these different categories of sales therefore cannot furnish dependable evidence of the market price unless the special circumstances attending them are dealt with and taken into consideration. Under the circumstances, bare evidence proving only the factum of sale would be of no use.'

5. Thus, it would be necessary for the vendor and the vendee of a particular sale to come in the witness box to prove the circumstances under which the sale was effected and the price paid. In the instant case, the claimant as well as the Collector remained satisfied by producing the revenue entries without showing the circumstances under which the sale had taken place.

6. We find that the learned Additional District Judge had gone on to hold that the instances of sale referred to by the claimant were bogus and the sales were fictitious. He had come to this conclusion in view of the evidence which had been recorded by him in another case. As this evidence is not available on the record of the present case, we cannot agree that these instances were either bogus or fictitious.

7. Mr. Kedar Ishwar submits that we should remand the case to the District Judge under Order 41, Rule 23-A. In this connection, he cites *Bira Mallik v. Chaitan Mallik*, AIR 1973 Orissa 102 and *Miss Bedlani v. A. Hoogewerfe*, AIR 1975 Raj 153. In the first case, a learned single Judge of the Court came to the conclusion that a case not covered by Rule 23 or 25 of Order 41 of the Civil P. C. could be remanded under inherent powers of the Court. In the second case, a learned single Judge of Rajasthan High Court found that the lower appellate Court had not addressed itself to the real question in controversy between the parties and so sent the case back for re-trial. However, the Civil P. C. was amended in Feb., 1977 and Rule 23-A was added. It takes care of cases which did not fall under Rule 23. It reads :

'Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a retrial is considered necessary, the appellate Court shall have the same powers as it has under Rule 23.'

We cannot, therefore, exercise our inherent powers and the case can be remanded only if it is covered by Rule 23-A.

8. Mr. Kedar Ishwar relies on the aforementioned Division Bench judgment of this Court for 'contending that the' case should be remanded. In that case, the appeal was by the State which had challenged the enhancement of compensation awarded by the District Judge. Since the Court came to the conclusion that the enhancement was not based on any legal evidence, the award was set aside and the case remanded for retrial. In the instant case, no enhancement has been made and we cannot reverse the judgment of the trial court for the failure of the appellant to produce the requisite evidence.

9. We find that it is a fit case where we must exercise our powers under Rule 27 (1)(b) of O. 41, C. P. C. It reads :

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

..... (b) the appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause.' We are conscious of the fact that under this Rule a witness can be allowed to be examined and a document allowed to be produced only if the Court finds it necessary in order to pronounce the judgment. In other words, if the Court is in a position to pronounce the judgment without the examination of any witness or production of any document, the Court should proceed to pronounce the judgment. The Judicial Committee of the Privy Council in *Parsotim Thakur v. Lal Mohar Thakur*, AIR 1931 PC 143 while considering ambit of Rule 27 (1) (b) observed :

'Under Rule 27, Clause (1) (b) it is only where the appellate Court 'requires' it (i. e. finds it needful) that additional evidence can be admitted. It may be required to enable the Court to pronounce judgment, or for any other substantial cause, but in either case it must be the Court that requires it. The legitimate occasion for the exercise of this discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence, but 'when on examining the evidence as it stands, some inherent lacuna or defect becomes apparent.' ' The Judicial Committee also observed:

'... .. the power so conferred upon the Court by the Code ought to be very sparingly exercised, and one requirement at least of any new evidence to be adduced should be that it should have a direct and important bearing on a main issue in the case.' . .

10. The Supreme Court in *Municipal Corporation of Greater Bombay v. Lala Pancham*, AIR 1965 SC 1008 (at p. 1012) ruled :

'No doubt, under Rule 27, the High Court has the power to allow a document to be produced and a witness to be examined. But the requirement of the High Court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision does not entitle the High Court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in a case. It does not entitle the appellate Court to let in fresh evidence only for the purpose of pronouncing judgment in a

particular way. In other word's, it is only for removing a lacuna in the evidence that the appellate Court is empowered to admit additional evidence.'

11. In the case in hand, as we have already pointed out that the parties produced evidence about the factum of various sales. This has indeed been taken into consideration by the trial Court. However, neither the parties nor the trial Judge were conscious of the fact that the evidence of mere factum of sale cannot enable the Court to decide the just compensation which should be paid for the land acquired. It is, therefore, not possible to pronounce the judgment in respect of the just compensation to which the appellant is entitled. The lacuna in evidence must be removed. We would, therefore, allow the parties to produce witnesses in respect of the mutations produced by them.

12. The trial Court is, therefore, directed to record the evidence of witnesses in respect of the mutations produced by the appellant as well as the Collector and send the same to this Court. The parties are directed to appear before the District Judge on 17th May, 1982. The District Judge will complete the recording of the witnesses within a period of four months thereof as far as possible.