

(1983) 07 AHC CK 0030
In the Allahabad High Court
Case No : First Appeal No. 276 of 1977

Collector	Vs	APPELLANT
Evangelical Alliance Mission and Another		RESPONDENT

Date of Decision : 25-07-1983

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 25(3), 9(2)

Citation : AIR 1984 All 25

Hon'ble Judges : N.D. Ojha, J;I.P. Singh, J

Bench : Division Bench

Advocate : Yudhishthira, for the Respondent

Final Decision : Allowed

Judgement

Ojha, J.—Two acres of land belonging to the respondents along with a building and 109 trees were sought to be acquired for the Lal Bahadur Shastri National Academy of Administration, Mussoorie. Notification u/s 4 of the Land Acquisition Act (hereinafter referred to as the Act) was issued on 1st Aug.. 1973. It was followed by a notification u/s 6 of the Act dt. 21st Feb.. 1975 and a notification u/s 9 of the Act dt. 20th Mar., 1975. After issuing notice? to the claimant-respondents the Land Acquisition Officer determined the amount of compensation payable to them at Rs. 19,561-66. Break-up of this compensation was as follows :--

For the buildings

Rs. 11,190-00

For two acres of land

Rs. 3,206-14

For 109 trees.

Rs. 2,614-00

As solatium

Rs. 2,551-52

Aggrieved by the amount awarded by the Land Acquisition Officer as compensation the claimant-respondents made an application u/s 18 of the Act for a reference being made to the District Judge. In pursuance of that application a reference was made to the District Judge. Dehradun, who after hearing the parties and taking into consideration the evidence produced by them gave an award on 20th Dec., 1976; whereby he enhanced the amount of compensation from Rs. 19,561-60 to Rs. 45,696-50. In doing so he agreed with the Land Acquisition Officer that the value of the building was Rs. 11,190-00. In regard to the value of the two acres of land, however, he took the view that its market value was Rs. 24,000/-. Likewise in regard to the value of 109 trees the District Judge took the view that the proper compensation for those trees was Rs. 5,228-00. This was an amount just double the amount awarded by the Land Acquisition Officer. Aggrieved by the award of the District Judge, the Collector, Dehradun, has preferred this first appeal. A cross-objection has also been filed by the claimant-respondents on 1st Feb., 1978. The cross-objection is valued at Rs. 25,000/-. It contains three grounds and their perusal indicates that it is confined to the tennis court and retaining walls. The claimant-respondents have stated in their cross-objection that the District Judge has committed an error in not allowing any compensation in respect of the tennis court and the retaining walls.

2. The learned Standing Counsel appearing for the Collector, Dehradun, has urged that since the claimant-respondents had not filed any objection u/s 9(2) of the Act the District Judge was not competent to enhance the amount of compensation awarded by the Land Acquisition Officer. In support of this submission reliance has been placed on a decision of the Supreme Court in *Dilawarsab Babusab Mullasab and Others Vs. Special Land Acquisition Officer*, . A similar objection was raised on behalf of the appellant before the District Judge also but was repelled. The relevant issue on this point was issue No. 1 and from a perusal of the findings of the District Judge on this issue it is apparent that the District Judge was of the view that sufficient cause was made out by the claimant respondents for not filing objection u/s 9(2) of the Act. Sub-section (2) of Section 25 of the Act on which reliance has been placed by the Standing Counsel provides that when the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector. In our opinion on the findings recorded by the District Judge it is not Sub-section (2) but Sub-section (3) of Section 25 of the Act which is relevant. It reads :--

"When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed the amount awarded by the Collector.

It has been urged by the standing counsel that no application much less an affidavit had been filed by the claimant-respondents making out a case for not filing an objection u/s 9(2) of the Act and consequently it was not open to the District Judge to have come to the conclusion that sufficient cause in this behalf had been made out. We are not impressed by this argument inasmuch as it places more emphasis on technicality than on substance. Order XV, Rule 5 C.P.C. contemplates that if a tenant in a suit of the nature mentioned therein fails to make the necessary deposits contemplated by the said rule and fails to file a representation within the time provided therein his defence is liable to be struck off. A question arose as to whether the provision in regard to filing an objection was of a mandatory nature so that in the event of no representation being filed the court was bound to strike off the defence. A Division Bench of this Court answered the aforesaid question in the affirmative. Disagreeing with the view of this Court it was held by the Supreme Court in Bimal Chand Jain Vs. Sri Gopal Agarwal, that it will always be a matter for the judgment of the Court to decide whether on the material before it, notwithstanding the absence of a representation under Sub-rule (2), the defence should or should not be struck off. The principle contained in the aforesaid case, in OUT opinion, can be applied to the facts of the instant case also. We are accordingly of the view that notwithstanding no formal application or affidavit having been filed by the claimant-respondents claiming the benefit of Sub-section (3) of Section 25 of the Act it was open to the District Judge on the material already on record to arrive at the conclusion that sufficient cause had been made out for not filing an objection as contemplated by Section 9(2) of the Act.

3. In Babu Ram, Ashok Kumar and Another Vs. Antarim Zila Parishad, a Full Bench of this Court held that a Court of appeal would not interfere with the exercise of discretion by the court below if the discretion has been exercised in good faith, after giving due weight to relevant matters and without being swayed by irrelevant matters. If two views are possible on the question, then also the Court of appeal would not interfere, even though it may exercise discretion differently, were the case to come initially before it. In order to justify interference the exercise of discretion should manifestly be wrong. Having given our anxious consideration we find it difficult to take the view that the exercise of discretion by the District Judge in this behalf is manifestly wrong. The submission made by the Standing Counsel that the District Judge committed an error in enhancing the amount of compensation notwithstanding no objection having been filed by the claimant-respondents u/s 9(2) of the Act is, therefore, not sustainable.

4. Coming to the merits of the findings of the District Judge enhancing the amount of compensation to Rs. 45,696-50 it would be seen that he has disagreed with the award of the Land Acquisition Officer only on two counts (1) in regard to the value of the land, and (2) in regard to the value of 109 trees standing on the -said land. A certain sale deed was relied on before the District Judge by the Collector for determination of the amount of compensation as an

exemplar. The District Judge has found that the said sale deed could not be used as an exemplar inasmuch as the land of that sale deed was far away from the road and at much lower level and it might have been just a mountain at the time of sale. It was also found that the the sale deed was three years earlier than the present acquisition. In our opinion the view taken by the District Judge suffers from no manifest error.

5. In this connection it is pertinent to note that the sum of Rs. 24,000/- as compensation for the land has been determined by the Land Acquisition Officer on the basis of an admission of the Academy, for which the land was being acquired, in a letter stating that the City Board had assessed the value of the land under acquisition at Rs. 24,000/-. This letter was proved by the claimant-respondents and was marked as Ex. 2. It is settled law that an admission is the best evidence that an opposing party can rely upon, and though not conclusive, is decisive of the matter, unless successfully withdrawn or proved erroneous (see *Narayan v. Gopal* AIR 1960 SC 100. The aforesaid admission was at no stage of the proceeding withdrawn by the Collector nor was any cogent evidence produced to prove that the said admission was erroneous. In this view of the matter no exception can be taken of the finding recorded by the District Judge that the value of the land was Rs. 24,000/-.

6. Coming to the value of 109 trees standing on the land the District Judge has again placed reliance on such material authenticity of which was not disputed in this connection he has held :--

"The Forest Department itself has formulae for working out the timber and/or fuel value of the trees with reference to their girth or diameter. These are well known. Thus for example a Banj tree belonging to the diameter of 50 to 60 cms. will give dry fuel weighing about 25 quintals. Even if we value this wood @ Rs. 5/- per quintal the value of the tree would come to Rs. 125/-. As against this, the valuation by the D.F.O. allows only Rs. 50/- therefore. The same underrating can be illustrated from every item of the valuation. I am, therefore, of the view that the proper compensation would be at least double the amount awarded by the Land Acquisition Officer. It comes to Rupees 5228/-."

Nothing has been shown to us which may justify taking a view contrary to that taken by the District Judge in this behalf particularly, as seen above, he has relied on the material which indicates what the Forest Department itself has been doing in the matter of valuing the trees.

7. No other point has been urged by the Standing Counsel in support of the appeal and in view of our discussion, as aforesaid, the appeal is liable to be dismissed.

8. Coming to the cross-objection, as already pointed out above it is confined to the tennis court and the retaining walls. It has been urged by counsel, for the claimant-respondents that the claimant-respondents were entitled to be paid compensation in respect of the tennis court also separately. The District Judge in

this connection, on the basis of the statement of P. W. 1 Sujan Singh, has held that there was no regularly constructed tennis court and there was a levelled land which was used as tennis court also. It appears that the value of the land was ascertained on the basis that it was not unlevelled land but levelled land. The cost which may have been incurred by the claimant-respondents in converting the unlevelled land into a levelled land stands necessarily included in the value of the land. The mere fact that a portion of such levelled land was being used by the claimant-respondents as tennis court is of no significance for determining the market value of such land. Since this is the view taken by the District Judge also we are of opinion that he has committed no such error which may justify interference by this Court. The same can be said in regard to the claim about the retaining walls. The District Judge has pointed out that these retaining walls are essential for bringing the mountainous land to a level and retaining the same. Since the land has been valued not as unlevelled land but as levelled land for payment of compensation to the claimant-respondents, it goes without saying that the cost of construction of the retaining walls stands automatically included in the value of the land. As such the claimant-respondents will not be entitled to any compensation for retaining walls in addition to the compensation for the land as levelled land.

9. A; this stage it may be pointed out that an application was made by the claimant-respondents on 17th Aug. 1982, for adding certain grounds in the cross-objection. A perusal of these grounds indicates that they inter alia seek to challenge the amount of compensation for the land and the trees. The valuation of the cross-objection is not sought to be enhanced on payment of any more court fees by the claimant-respondents in regard to their additional claim which they purport to make by challenging the amount of compensation for the land and the trees.

10. In this view of the matter we are of opinion that since no additional compensation is sought by the claimant-respondents in regard to the land and the trees on payment of more court fees thereon, mere addition of grounds challenging the compensation for the land and the trees is of no avail. That apart even if by any stretch of imagination it could be said that the claimant-respondents want to enhance the valuation of the cross-objection after payment of additional court fees, the application is still not maintainable inasmuch as it has been filed after more than four and a half years of the filing of even the cross-objection and the claim of the respondents in regard to any additional amount of compensation for the land and the trees is highly barred by time. No reason, whatsoever, has been given in the application which may indicate that there has been any sufficient cause for not filing either an appeal or cross-objection in this regard within time. The application further seeks to add certain grounds challenging the validity of the notifications under Sections 4, 6 and 9 of the Act. This plea obviously cannot be raised in a reference u/s 18 of the Act, the same being confined to the matters referred to in the said section. No such plea was pressed, and in our opinion rightly, before the District Judge. The prayer for

adding such grounds in the cross-objection can also, therefore, be not allowed. The said application is, accordingly, liable to be dismissed and is hereby dismissed.

11. In view of the foregoing discussion the appeal as well as the cross-objection is dismissed. In the circumstances of the case, however, the parties shall bear their own costs.