

(1967) 08 DEL CK 0008

In the Delhi High Court

Case No : Miscellaneous First Appeal No. 86 of 1966

Collector Land Acquisition

APPELLANT

Vs

Bhadia

RESPONDENT

Date of Decision : 08-08-1967

Acts Referred:

Citation : (1967) 3 DLT 562

Hon'ble Judges : I.D. Dua, C.J.; S.N. Shankar, J.; Narain Andley, J

Bench : Full Bench

Advocate : K.C. Pandit and Bhagat Ram, for the Appellant;

Judgement

I.D. Dua, C.J.

(1) This appeal, which is directed against the award given by the learned Additional District Judge, Mandi on 30th June, 1966 on a reference made u/s 18 of the Land Acquisition Act, initially came up before Hardy, J. who felt that the appeal deserved to be disposed of by a larger Bench. In order to understand the difficulty faced by the learned Judge, it may be stated that the land which is the subject-matter of the acquisition and of the proceedings for payment of compensation is situated in village Tamroh, Tehsil Sadar, District Mandi. The acquisition was made for the construction of Hydel Channel by Beas Sutlej" Link Project Authorities. Notification u/s 4 of the Land Acquisition Act was issued on 30th April, 1964 and under sections 6, 7 and 17(4) on 24th March, 1965. Land had also been acquired in villages of Malhanoo, Daan and Rau and in those cases, the learned Additional District Judge had already given his awards. Those villages, it is common case of the parties, are contiguous to village Tamroh and the rates fixed in respect of the land forming the subject-matter of those awards were applied to the instant case as well. The learned Single Judge after noticing three mutations Exhibit R. A. dated 8th January 1963, Exhibit R. B. dated 9th March 1963 and Exhibit K C. dated 23d December 1963, on which the Collector had placed reliance, felt that Exhibit R. B. from village Tamroh had an important bearing on the present case because the land covered by the said mutation was

of the same quality as the one forming the subject-matter of the present appeal. According to Exhibit R. B., the rate could not exceed Rs, 300.00 per bigha. with the result that the rate of Rs. 1,100.00 per bigha, as fixed by the learned Additional District Judge, was too high. The other question as to how far it was open to the learned Additional District Judge to have relied on the awards given by him in other cases dealing with instances relating to sale of land in other villages, for the purpose of determining the market value of the land acquired in the case in hand, was also considered to be of importance, though that question was not raised by the learned counsel for the Collector before the learned Single Judge. These questions were considered to require decision by a larger Bench.

(2) The matter was then after placed before a Division Bench (Kapur and Hardy JJ.) and it appears from the order of the Division Bench that Hardy, J. was inclined "towards the view that the earlier decisions of the learned Additional District Judge were not admissible in evidence u/s 13 of the Indian Evidence Act in proof of the market value of the land in dispute, whereas Kapur, J. was - inclined to take the view that section 13 was of sufficient amplitude to permit the Court to admit those judgments in evidence. Before the Bench, on behalf of the appellant, reliance was placed on a Single Bench, decision of the Bombay High Court in Special Land Acquisition Officer, Bombay v. Lakhamsi Chelabhai, and on behalf of the respondent reliance was placed on a larger number of decisions including three Privy Council decisions and two Supreme Court decisions. of course they were. all prior to the decision of the Bombay High Court, in, which most of those authorities were considered and distinguished. It was in these circumstances that the Division Bench considered it proper to refer the matter to a still larger Bench. It appears that before the Division Bench, the only point canvassed was with regard to the legality of taking the awards in the earlier acquisition proceedings into consideration turn the purpose of determining the amount of compensation in the present case. The Division Bench did not consider it necessary to formulate with precision the question to be answered by the Full Bench, though it is quite apparent that all that was desired was that this matter alone may be heard by a Bench of three Judges. It is in these circumstances that this appeal was placed before us for disposal.

(3) At the outset, we asked the learned Counsel for the appellant Shri K. C. Pandit to formulate the question which he desired this Bench 1. A 1. R. 1960 Bombay 78. to answer. As it was not quite clear whether the objection on behalf of the appellant related to the relevancy or the admissibility of th3 earlier awards, or both we desired Shri K C. Pandit to expressly state before us as to what position he had been instructed to adopt before us. The learned counsel after deliberating for some time frankly stated that he could not question the relevancy to the earlier awards because the land which was the subject-matter of acquisition and payment of compensation in the earlier awards, was contiguous to the present land and was situated in the same locality. The quality of the land in the earlier as well as in the present acquisition proceedings was also stated to be similar. After this concession, which, in our opinion, is not unjustified, the

present controversy gets limited within a very narrow compass, namely, are the earlier awards admissible in evidence in the present proceedings? In this connection, it may appropriately be pointed out that this objection has not been raised in the memorandum of the grounds of appeal in this Court.

(4) Here, we may briefly point out why we consider the appellant's concession not to be unjustified. The valuation of immovable property does not appear to be an exact science, for it is not an arithmetical or an algebraic problem which can be solved with precision by exact calculation or by an abstract formula. In the process of determination of market value, in cases like the present, there must, from the very nature of things, be room for inferences and an element of rational guess work. The broad well recognised test is that of a willing purchaser and a willing seller transacting the sale of property, similar in quality, potentiality, extent and locality. The extent of such similarity would depend in each case on its own peculiar facts and circumstances and the Court has to apply its judicial mind in determining the market value on just and fair appraisal of the similarity of the two properties. If, Therefore, similar land in close proximity both in point of time and quality, including potentialities has been sold, such an instance would seem to us to be relevant for the purpose of determining the market value of the land acquired. Now if an instance of sale is relevant, then it is difficult to rule out as irrelevant an instance in which the Court has judicially determined the market value of Shimla land compulsorily acquired. Such an instance seems to us to furnish a fairly good guide in determining the market value of similar land in the locality. both sections 11 and 13 of the Indian Evidence Act would seem to cover such a case.

(5) The learned counsel for the appellant has primarily, and indeed exclusively relied on the reasoning of the learned Single Judge of the Bombay High Court in the case of Lakhamji Chelabhai and it has been submitted that all the earlier decisions taking a contrary view have been dealt with in this judgment and distinguished. The learned counsel has indeed adopted the argument and the reasoning on which the judgment of Bombay High Court is based. Turning to the judgment of the Bombay High Court, one distinguishing feature which prominently stares us in the face is that in that case the judgment in the earlier acquisition proceedings was sought to be ruled out on the ground of its being irrelevant under the provisions of the Indian Evidence Act. The learned Judge considered the scope of the various sections of the Indian Evidence Act on the question of relevancy and came to the conclusion that neither section 11 nor section 13 nor any other section of the Indian Evidence Act rendered the judgments in the earlier awards relevant where the claimants were different persons. It may incidentally be pointed out that in the reported case the earlier acquisition had been made in January, 1946 whereas the notification u/s 4 of the Land Acquisition Act in the case before the learned Single Judge was dated 19th January, 1951, about five years later, In proximity of time, Therefore, there was apparently little similarity. In so far as section 13 of the Indian Evidence Act is concerned, the learned Judge felt that the earlier acquisition proceedings and

determination of compensation payable to the claimants could not constitute a transaction. In his view, section 11 also, though expressed in wide terms, was not intended to be construed widely and it included only those facts which either exclude or imply more or less distinctly the existence of fact? sought to be proved. The connection between the fact in issue and the collateral fact sought to be proved must, according to this decision, be mediate so as to render the co-existence of the two highly probable. Admissibility of a particular piece of evidence offered must, Therefore, in the opinion of the learned Judge, be so closely connected with, and in fact must depend on the weight to be attached to that piece of evidence, if it is taken into consideration. The earlier judgments sought to be proved in the reported case did not satisfy this test. In our view, the test laid down by the learned Judge in regard to the applicability of section 11, Indian Evidence Act, is unexceptionable, but the case before us quite clearly fails within the test laid down in the Bombay decision. In regard to section 13 also, we consider it appropriate to refer to two decisions of the Supreme Court in *Sri Niwas Krishnarao Kango v. Narayan Devji Kango*", and *Sital Das v. Sant Ram*". In the former decision, judgments awarding maintenance out of joint family property were held to be admissible u/s 13 of the Evidence Act as assertions that the properties in dispute belonged to the joint family and in the latter, a judgement in which title was asserted was treated as a transaction within the meaning of section 13, Indian Evidence Act. In face of the concession made by the appellant and in view of the opinion we have just expressed, the earlier awards must be held to be relevant and the Bombay decision in the case of *Lakhamsi Chelabhai* can be of no avail to the appellant. If the earlier decisions are relevant, then the objection to their admissibility is not easy to sustain, particularly when this objection has not even been taken in the memorandum of appeal. The learned counsel for the appellant has also apart from the ratio of the Bombay decision addressed no independent arguments against their admissibility. On the view that we have taken, we do not consider it necessary to consider in detail the various decisions cited on behalf of the respondents which have been noted by the Division Bench in their referring order.

(6) Before closing, however, we should like to make it clear that even though the earlier awards are both relevant and admissible, the probative value to be attached to them is not a matter which we are called upon to decide and we express no opinion on it. It would be for the Division Bench disposing of this appeal pursuant to the order of the learned Single Judge to consider how far those awards are helpful in determining the market value of the land now in question. The probative value of these awards, needless to point out, would depend on various factors with which We are not concerned at this stage.

(7) The case would now go back before the Division Bench to be disposed of in accordance with law in the light of the observation made above. Costs of this reference would be costs in the cause.