
(2013) 07 AHC CK 0208
In the Allahabad High Court
Case No : First Appeal No. 129 of 1988

District Magistrate and Others	Vs	APPELLANT
Majid and Another		RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : (2014) 1 ALJ 301 : (2013) 100 ALR 604 : (2013) 121 RD 220

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : S.C. Srivastava, for the Appellant; A.K. Sinha, K.P. Agarwal, R.S. Pandey and Rajesh Kesarwani, for the Respondent

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—Heard learned Standing counsel appearing for appellant Nos. 1 and 2 and Sri. S.C. Srivastava, learned counsel appeared for appellant No. 3. No one has appeared for the respondents despite case being called out twice.

2. The notification dated 11.5.1979 u/s 4 of the Land Acquisition Act was issued to acquire the land in question which involved plot No. 276 and 442 having area of 0.42 acres situate in Village-Muradganj, Pargana-Haveli, District-Jaunpur.

3. The SLAO made an award u/s 11 on 29.5.1982. The SLAO for the entire area of 14.625 acres of land awarded a total of Rs. 2,97,507.53. On reference being preferred by the claimant respondent u/s 18 of the Act the III Additional District Judge by the impugned judgment and order dated 11th November 1987 has directed for payment of compensation as per the sale deed of Devi Prasad which has been referred to at item No. 15 in the award of the SLAO and for payment of statutory benefits admissible under the Act.

4. Aggrieved by the aforesaid award of the Additional District Judge, this appeal u/s 54 of the Act has been preferred by the Collector/District Magistrate and the Special Land Acquisition Officer (in short SLAO). Later, U.P. Power Transmission Corporation was impleaded as appellant No. 3 as the land was acquired for its

benefit.

5. The impugned judgment, order and award reveals that it has been passed on the basis of the sale deed by which Devi Prasad had purchased 6 decimal of land for a sum of Rs. 7,251/-. The date of the sale deed and other details are not mentioned in the impugned judgment. The reference court has not even cared to calculate the market rate as per the above sale deed and has directed for payment of compensation on its basis.

6. I have gone through the paper book and the entire record of the reference court. The said sale deed is not part of the evidence.

7. It has long been settled by the Supreme Court in *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, that the award of the SLAO is simply an offer and is not to be treated as a judgment of the trial court. The material relied upon by the SLAO while making the award cannot be utilized by the reference court unless it is produced in evidence and is proved in accordance with law. In other words, the reference is like an original proceeding wherein market value of the acquired land is required to be determined on the basis of the evidence/material produced before the Court. The claimant is in a position of a plaintiff and the burden is upon him to show that the offer made by the SLAO is inadequate and that he is entitled to higher compensation.

8. Once the burden to establish that the award of the SLAO is incorrect and that the compensation offered to him ought to be higher, it is the duty of the claimant to adduce relevant evidence to prove the market value at which he is entitled to receive compensation.

9. It has repeatedly been held by the Supreme Court that the best evidence for determining the market value of any property is the exemplar sale deeds in respect of the very property and if no suitable sale deed proximate in time to the acquisition of the land is available, then the Court may fall back upon the exemplar sale deed of the land adjacent to the acquired land or of the nearby villages.

10. The impugned judgment and order of the reference court does not point out any error of law in the award of the SLAO or as to how the compensation awarded is on the lower side. The reference court has simply based its award on the sale deed of Devi Prasad. The said sale deed was never produced in evidence before it. Thus, without adducing any evidence to prove that the compensation offered is inadequate or that it should be on higher side, the reference court manifestly erred in law in awarding compensation on the basis of the sale deed of Devi Prasad which was not part of the record.

11. The reference court has not assigned any other reason and has not followed any other evidence in awarding compensation according to the aforesaid sale deed.

12. It may be important to note that even photostat copies of sale deed are

ordinarily inadmissible in evidence and cannot form the basis for enhancement of compensation. Therefore, the complete absence of the sale deed from the record is fatal and the reference court fell in grave error in referring to it and basing its judgment upon it.

13. In view of the aforesaid facts and circumstances, the impugned, judgment order and award dated 11th November 1987 passed by the III Additional District Judge, Jaunpur in Land Acquisition Case No. 167 of 1985 (Majid and another v. Collector, Jaunpur and another) is set aside. Appeal is allowed.