

(2010) 05 SHI CK 0112

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No. 270 of 2005

LAC and Others

APPELLANT

Vs

Subash and Others

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 17, Order 41 Rule 27
Land Acquisition Act, 1894 — Section 4

Citation : (2010) 05 SHI CK 0112

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Judgement

Dev Darshan Sud, J.—The judgment in these appeals was reserved on 30.3.2010. Clarification of a part of the record was required, therefore, these appeals are listed again for further consideration.

2. These appeals relate to the land acquired by the State for setting up a Sewerage Plant in Solan Town, arising out of the same notification issued by the State Government, the learned reference Court has awarded a sum of Rs. 812/- per square meter for the land. In R.F.A. No. 8 of 2007, titled: L.A.C. and Ors. v. Smt. Rattani and Anr. and other connected appeals, I upheld the award made by the learned reference Court. In these circumstances, all these appeals are dismissed. It is directed that they shall abide by the judgment passed in RFA No. 8 of 2007 decided by this Court.

3. One contention urged on behalf of learned Advocate General requires to be considered. It is urged that deduction for development of the land should have been awarded as this is the normal rule.

4. This submission cannot be accepted as I do not find any pleading as the foundation or evidence which has been brought on the record. In C.R. Nagaraja Shetty (2) v. Special Land Acquisition Officer and Estate Officer and Anr. (2009) 11 SCC 75, the Supreme Court holds:

18. The situation is no different in the present case. All that the acquiring body has to achieve is to widen the national highway. There is no further question of any development. We again, even at the cost of repetition, reiterate that no evidence was shown before us in support of the plea of the proposed development. We, therefore, hold that the High Court has erred in directing the deduction on account of the developmental charges at the rate of Rs. 25 per square foot out of the ordered compensation at the rate of Rs. 75 per square foot. We set aside the judgment to that extent.

(PP-79).

5. The award passed in these appeals is based on another award which has been referred to by the learned reference Court in its judgment. However, this is not a satisfactory method for arriving at a conclusion as it is the settled law that in evidence that a document has to be proved in accordance with law. The Court states that the award is lying in its safe custody and therefore, can be relied upon. This is a practice which cannot be encouraged. Considering now that the proceedings were conducted in the year 1996 and the case has been hanging fire for more than 14 years, it would be inappropriate to remand the case for the purposes of only having that award exhibited formally. In these circumstances, I deem it fit to dispose of these appeals in accordance with the judgment rendered in RFA No. 8 of 2007 in which the acquisition was for the same purpose was the subject matter of adjudication.

CMP(M) No. 697 of 2005 in RFA No. 270 of 2005

CMP(M) No. 698 of 2005 in RFA No. 271 of 2005

CMP(M) No. 693 of 2005 in RFA No. 272 of 2005

CMP(M) No. 699 of 2005 in RFA No. 273 of 2005

CMP(M) No. 694 of 2005 in RFA No. 274 of 2005

CMP(M) No. 700 of 2005 in RFA No. 275 of 2005

6. On the applications for additional evidence, which have been drafted under the provisions of Order 18 Rule 17 of the CPC which are not maintainable but the only provisions applicable would be Order 41 Rule 27, even accepting that mentioning of the wrong provisions of the law would not constitute a bar to urge these applications, I find that the pleadings do not specify the provisions of Order 41 Rule 27 in which additional evidence can be admitted. The primary ground urged is that since huge compensation has to be paid, therefore, additional evidence would be required to be led. There is nothing to indicate as to why this evidence was not adduced before the learned appellate Court. Moreover, the so-called sale deeds which are sought to be proved do not advance the case of the State any further as the proximity of these sale deeds to the date of issuance of Notification u/s 4 of the Land Acquisition Act, has not been established. All these applications are, therefore, dismissed. These appeals are accordingly rejected.

There shall be no order as to costs.