
(2016) 03 AHC CK 0157
In the Allahabad High Court
Case No : First Appeal No. 620 of 2001

M.D., U.P. Jal Nigam, Lko. and Others	APPELLANT
Vs	
Shiv Nath Seth and Others	RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (2016) 4 ADJ 339

Hon'ble Judges : Sunita Agarwal, J.

Bench : Single Bench

Advocate : K.B. Mathur, R.C. Gupta and Vimlesh Kumar Rai, for the Appellant;
H.N. Singh and B.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Sunita Agarwal, J.—1. Lower Court Records be remitted to the lower Court.

2. Heard Sri R.C. Gupta, learned counsel for the petitioners and Sri H.N. Singh holding brief of Sri Satendra Narain, learned counsel for the respondents.

3. This is the first appeal filed by U.P. Jal Nigam against the judgment and order dated 12.4.2001 passed in Land Acquisition Reference Case No. 1 of 2000 (Shiv Nath Seth v. State of U.P.). The State of U.P. through Collector, Jaunpur was represented before the reference court, however, the State has chosen not to challenge the award of the reference court regarding determination of compensation with regard to the land of the claimant Shiv Nath Seth.

4. Before coming on the merits of the judgment and order dated 12.4.2001 in answering the reference, certain relevant facts of the case are to be sifted. One Shiv Nath Seth son of Sri Raghunath Seth, the claimant who is resident of Kerakat, Post Office Sadar, District Jaunpur, filed a Writ Petition No. 44262 of 1998 (Shiv Nath Seth v. State of U.P. and others) stating therein that the respondents had walked into his Bhumidhari in plot No. 12/164 area 32 decimal and plot No. 2 area 3 decimal without any authority and on his property, the U.P.

Jal Nigam had constructed a pumping set and sewage drain under the Gomti Pollution Control Project. The petitioner complained that his plots had been occupied and taken without adopting the procedure established by law for acquisition of land and, therefore, the petitioner could not object to the acquisition, even compensation had not been recognised by the respondents. The land was taken over in the year 1972-73 and more than 20 years have passed, therefore, the petitioner had been left with no choice except to accept the compensation for the land possessed for a public project.

5. It appears that the then Tehsildar certified the occupation of the petitioner's plot for the purpose of executing a public project. The then District Magistrate, Jaunpur sent a letter dated 2nd April, 1998 to the General Manager, U.P. Jal Nigam, Lucknow stating therein that the claimant Shiv Nath Seth be paid compensation in accordance with law for the land used for executing the project under the Gomti Pollution Control Project. A reminder was also sent on 13th May, 1998 to the effect that the compensation be processed.

6. On the presentation of the abovenoted writ petition, the State of U.P. did not file any counter affidavit. A counter affidavit on behalf of U.P. Jal Nigam sworn by a Noter and Drafter of the Constructions Division, U.P. Jal Nigam, Jaunpur, was filed.

7. In the counter affidavit, it was accepted that the land on which the aforesaid project was executed, belonged to Shiv Nath Seth the petitioner therein. It was further contended that the petitioner did not raise any claim or make any complaint about the compensation having been taken of his land nor made any complaint for non-payment of compensation.

8. Noting various contradictions in the averments of the counter affidavit filed by the Noter and Drafter of the Constructions Division, U.P. Jal Nigam, Jaunpur, this Court asked the Executive Engineer, Constructions Division, U.P. Jal Nigam, Jaunpur and the Superintending Engineer, 7th Region, U.P. Jal Nigam, Varanasi, to remain present before it on the next date fixed. Further interim mandamus was issued to the respondents to process the claim or show cause. Neither the claim was processed nor the cause was shown by the respondents/State of U.P. The District Magistrate chose not to reply to the petition.

9. Resultantly, after hearing the learned Chief Standing Counsel on behalf of the State of U.P. and the learned counsel appearing on behalf of U.P. Jal Nigam, the writ petition was decided on 24th November, 1999.

10. On behalf of the State of U.P., the submission of the learned Chief Standing Counsel in the Court recorded in the order are as follows:--

"(a) It is correct that there were no land acquisition proceedings.

(b) It is accepted that the land of the petitioner had been trespassed by the State of Uttar Pradesh.

- (c) It is acknowledged that compensation has not been paid to the petitioner; and
- (d) That the State respondents would be advised to process the compensation."

11. It was recorded by the Court in the judgment and order dated 24th November, 1999 that the State of U.P. did not file counter affidavit despite repeated indulgences given to the District Magistrate, Jaunpur. It was found that the approach of the State respondents was callous, arbitrary and disrespect to the laws of the nation. The petitioner therein was deprived and dispossessed of his property in total violation of the laws and the Constitution, both and that court had left with no option but to require the District Magistrate, Jaunpur, to cause a statement of compensation to be filed before the District Judge, Jaunpur, within fifteen days from the date of order. The petitioner therein was held entitled to object to the quantum of compensation. The District Judge, Jaunpur was directed to settle the claim and ensure that the compensation is compatible with the criteria prescribed in the Land Acquisition Act, 1894. It was further directed that the compensation was to be paid to the petitioner in accordance with the current market rate, as on the date, for the reason that it is acknowledged that there were no proceedings for acquisition of the land of the petitioner in accordance with law. However, it was left open to the District Magistrate, Jaunpur to modulate the solatium and interest as permitted by law, on the compensation as prescribed under the Act. The District Judge, Jaunpur was further directed to settle the matter within two months of the presentation of the certified copy of the order before him. As the respondents did not file the counter affidavit despite the orders of this Court, both the respondents U.P. Jal Nigam as well as the State of U.P. were also subjected to costs of Rs. 10,000/- each to be deposited with the Registrar, High Court.

12. It appears that the District Magistrate, Jaunpur filed a statement on 18.12.1999 before the District Judge, Jaunpur pursuant to the judgment and order dated 24.11.1999 passed in Writ Petition No. 44252 of 1998. Thereafter, notices were issued to the parties. Alongwith the above mentioned statement an on the spot inspection report dated 17.12.1999 of the Sub-Divisional Officer, Sadar, Jaunpur, a report dated 17.12.1999 of the Tehsildar, Sadar, Jaunpur and measurement report dated 16.12.1999 of the Revenue Inspector/Lekhpal were also appended. In these reports, it was sought to be submitted that the claimant Shiv Nath Seth had no right or interest in the land on which sewage pump was constructed by U.P. Jal Nigam. The land on which the sewage pump was constructed, comprised of two plots namely plot No. 13 M. area 0-04 1/2th decimal and plot No. 12 area 0-02 decimal. The entire area of 0-02 decimal of plot No. 12 was recorded as "Banzar" whereas plot No. 13 M. area 0-04 and 1/2 decimal was recorded in the name of two persons namely Naseer Alam son of Iqbal Ahmad resident of Firosepur who is having 1/4th share and Smt. Dalgeera wife of Heera Lal having 3/4th share.

13. To establish this contention, reliance was placed upon a sale deed dated 8.10.1986 in the name of Smt. Dalgeera wife of Heera Lal and Naseer Alam son

of Iqbal Ahmad.

14. An objection was filed by Shiv Nath Seth the claimant and the report submitted by the revenue authorities was objected on the ground that there was no entry of "Banzar" on the disputed plots. The report regarding possession and ownership of Smt. Dalgeera was incorrect. These persons namely Dalgeera and Naseer Alam were set up by the revenue authorities with an oblique motive to defeat the claim of the applicant.

15. In the objection 40-Ga filed on behalf of the State of U.P., it was sought to be submitted that the land on which the sewage plant was constructed was different from the land, which was subject matter of the sale deed dated 23.11.1962 relied upon by the claimant Shiv Nath Seth and he had no right or interest in the land on which sewage pump was constructed.

16. Smt. Dalgeera w/o Heera Lal filed objection 47-Ga to submit that she was owner in possession of plot No. 13 area 13 decimal upon which sewage pump station was constructed. The land which was subject matter of the sale deed dated 23.11.1962 of Shiv Nath Seth, lies at the eastern side of "Nala" whereas "Nala" exists at the western side of the sewage pump. The sewage pump station was constructed over the land of Smt. Dalgeera and from a perusal of the sale deed dated 23.11.1962, it could be concluded that the land of Shiv Nath Seth lies at the western side of the "Nala" and, therefore, he had no concern with the land on which the sewage plant was constructed. The compensation was to be paid to Smt. Dalgeera and not to Shiv Nath Seth.

17. On behalf of the U.P. Jal Nigam, written statement was filed submitting therein that the pump was constructed in the year 1977-78. The claim of Shiv Nath Seth was contested on the ground that he did not raise any demand for compensation for a long time and further he was not the owner in possession of the land in question. The land owned by Shiv Nath Seth and the land on which sewage pump station was constructed lie on the opposite sides. Even otherwise, as per the report of the District Magistrate, Jaunpur, Shiv Nath Seth was not entitled for compensation for the reason that at the time of construction of the sewage plant, name of other persons have been recorded as Bhumidhar of the land in question.

18. On the contest of the parties, four issues were framed by the reference court which are as follows:--

"(1) Whether the compensation determined by defendant Nos. 1 to 6 with regard to land in question namely plot No. 12 area 0.04 decimal and plot No. 13 area 04-1/2 decimal is adequate, if so its effect.

(2) Whether the compensation with regard to the disputed land is payable to defendant No. 7 Smt. Dalgeera wife of Heera Lal for her 3/4th share in the same?

(3) Whether the claimant Shiv Nath Seth is entitled for compensation for 8 decimal of the land in question and 3 decimal on Arazi No. 2 being owner in

possession?

(4) To what relief, the claimants are entitled to."

19. Issue Nos. 1, 2 and 3 were decided together as they were connected with each other.

20. The question of determination before the trial court was as to who was the owner in possession of the disputed land on which the sewage pumping station was constructed between the year 1975 to 1978.

21. While examining this question, it was found by the trial court that indisputably no acquisition proceeding in accordance with law was undertaken with regard to the disputed land and further that this issue has been decided by this Court vide judgment and order dated 24.11.1999 passed in Writ Petition No. 44252 of 1998. In so far as the entitlement of compensation to the claimant Shiv Nath Seth or respondent No. 7 Smt. Dalgeera, the statements of D.W. -1 Chandra Bali Yadav the Lekhpal, D.W. -2 Ram Pyare the Revenue Inspector, D.W. -3 Anand Kishore Pandey the Lekhpal and D.W. -4 Dudh Nath the Tehsildar, Mariahu were considered in detail. These persons had participated in the measurement done on the instructions of the District Magistrate, Jaunpur. Their reports were forwarded by the District Magistrate along with his statement dated 18.12.1999. It was found by the trial court that the aforesaid defence witnesses could not prove their reports in their oral statements.

22. DW-1 Chandra Bali Yadav admitted in the oral deposition that his report was based upon the information given by the people of the locality and the measurement was not done by him. He also admitted that there was no entry of "Banzar" in plot No. 12/164 area 8 decimal and plot No. 13/165 area 2 decimal and plot No. 2 area 14 decimal, which was purchased by Shiv Nath Seth through the sale deed dated 23.11.1962. It was also admitted by him that the entries in the name of Shiv Nath Seth and existence of sewage pump over the plot No. 12/164 and plot No. 13/165 was admitted in the report dated 13.10.1997. He also admitted that no on the spot inspection was done by him to ascertain the existence of the plot/land on which sewage pump was constructed. He had signed the report on the information given by the then Kanoongo.

23. So far as the statement of D.W. -2 is concerned, it was recorded that he admitted that the measurement was done by him on the basis of "Padhtal Map" which was torn off. The map produced by him was not admissible in evidence as it was in bad shape and no measurement could have been done on the basis of that map. The measurement report submitted by D.W. -2 was, thus rejected.

24. The D.W. -3 Nand Kishore Pandey, the Lekhpal admitted that he was Incharge Kanoongo of the area in question, however, he did not examine the records namely "Khasra", "Khatauni" and "Naksha Bandobasti" before submitting his report. He did not inform to his officers about the correct position of the map. He also admitted that the consolidation map on the basis of which

measurement was done by him, was torn off.

25. The D.W. -4, the Tehsildar, Mariahu, Jaunpur, deposed that there was no demarcation of plot Nos. 12/164 and 13/165 before construction of sewage pumping station. The entries of "Banzar" over the plot in question was not clear. However, he admitted that plot No. 12/164 was bata number of plot No. 12 M. and plot No. 13/165 was bata number of plot No. 13 M. So far as the existence of plot No. 13/165, he has stated that at the time of measurement, he was informed by the persons present on the spot that plot No. 13/165 lies at the western side of "Nala". There was no demarcation of plot No. 13/165 in consolidation map and the entries in "Khasra" and "Khatauni" over plot No. 13/165 were in the name of Shiv Nath Seth, however, the position of plots Nos. 12/164, 13/165 and plot No. 2 purchased by Shiv Nath Seth could not be ascertained on the spot.

26. It was, therefore, concluded that the aforesaid witness did not identify the land which was subject matter of the sale deed of Shiv Nath Seth nor gave correct report.

27. The D.W. -5, the Executive Engineer, Constructions Division, U.P. Jal Nigam admitted that there was no record of the acquisition of the disputed land on which sewage plant was constructed.

28. So far as the entitlement of Smt. Dalgeera D.W. -1 is concerned, it was found by the trial court that she claimed ownership over the plot No. 13 area 13 decimal only. She had averred that out of total area of plot No. 13 was owned by Sultan and others. Over 10 decimal area her name was recorded. She was in possession of 10 decimal area and the sewage plant was constructed upon her land. She could not explain the boundaries of plot No. 13 area 10 decimal of which ownership was claimed by her. However, she admitted that in a compromise arrived between her and Shiv Nath Seth in a proceeding under Section 145 Cr.P.C., land on both sides of "Nala" namely eastern and western sides were found belonging to Shiv Nath Seth. She also admitted that she had no concern with 8 decimal area of land which belonged to Shiv Nath Seth. It was found that the sale deed in the name of Smt. Dalgeera was executed on 8.2.1996 whereas the sewage pumping station was constructed much earlier in the year 1975-78. She herself admitted that she was in possession of 10 decimal of plot No. 13 only and before the execution of sale deed in her name i.e. on 8.10.1986, sewage plant was already constructed. There is no mention in the said sale deed regarding construction of sewage plant or her entitlement to get compensation for the same. It was, therefore, concluded that the sewage plant was not constructed over the land which was purchased by Smt. Dalgeera vide sale deed dated 8.10.1986 and, therefore, she was not entitled for the compensation.

29. As regards the claim of 1/4th share of Nasruddin, it is recorded in the Statement of Collector that despite notices he did not put his claim and,

therefore, he was held dis-entitled for compensation. The only question remained thus of the claim of Shiv Nath Seth.

30. A perusal of the order of Reference Court further indicates that two Advocate Commissioners' reports were on record.

31. One of the Advocate namely Sri Jay Prakash Singh had appeared in the witness box to prove his report and the map prepared by him. Another report of Rameshwar Yadav, Advocate filed in favour of the Dalgeera, State of U.P. and Jal Nigam was not proved by him. The Court Amin submitted his report 114-Ga wherein he submitted that in case any of the parties provide him a map in which three fixed points were available, he would be able to give the spot measurement report.

32. The P.W. -3 Moti Lal and P.W. -2 Chhote Lal in their deposition supported the claim of P.W. 1 Shiv Nath Seth. P.W. -1 Shiv Nath Seth deposed that land on four sides of the sewage plant belonged to him, which was purchased by him from Smt. Genda Devi in the year 1962. The 24 decimal of the total land was purchased by him through a sale deed paper No. 76-Ga dated 23.11.1962 which was on record. The trial court recorded that there was no contradiction in the statement of PW-1 Shiv Nath Seth.

33. As regards the documentary evidences, the sale deed dated 23.11.1962 paper No. 76-Ga was examined and it was found that three plots for total 24 decimal area in Arazi No. 2 area 14 decimal, 12/164 area 8 decimal and 13/165 area 2 decimal were purchased. The boundaries given in the sale deed indicates that "Nala" existed at the eastern side of the land, which was subject matter of the sale deed. It was further found that the name of Shiv Nath Seth was recorded as Bhumidhar in 1386 and 1391 fasli after expunging the name of Smt. Genda Devi and remained in "Khasra" from the year 1387, 1398 to 1404 fasli. In "Khasra" 1404 fasli paper 36-Ga, there is an entry of "Abadi" over 4 decimal whereas in the remaining 4 decimal there is an entry of Gomti Pollution Sewage pumping station.

34. A compromise dated 16.8.1990 was arrived in a proceeding under Section 145 Cr.P.C. between Shiv Nath Seth and Smt. Dalgeera and it was agreed that Smt. Dalgeera and Heera Lal had no concern with plot No. 12/164 area 8 decimal and plot No. 13/165 area 02 decimal which was in the ownership of Shiv Nath Seth whereas in Arazi No. 13 area 13 decimal will remain in the ownership of Smt. Dalgeera.

35. The documentary evidences filed with list 67-Ga of the State of U.P. were rejected on the ground that those documents did not relate to the land of the claimant Shiv Nath Seth. The map prepared by survey Commissioner Sri Jai Prakash proved that in 8 decimal area of three plot Nos. namely 12/164 and 13/165 and Arazi No. 2 of Shiv Nath Seth, sewage pumping station was constructed.

36. Moreover, the Chief Standing Counsel who represented the State of U.P. before this court in the writ proceeding had admitted that the land on which the pumping station was constructed belonged to Shiv Nath Seth. This fact was also admitted in various communications between the authorities prior to filing of the statement in the reference court by the District Magistrate. For the first time before the reference court, a contradictory plea was taken which could not be proved by oral and documentary evidences. After holding that the land, which was taken by the State Government and was handed over to the Jal Nigam for construction of sewage pump in the year 1977-78, belonged to the claimant Shiv Nath Seth, the reference court proceeded to determine the market value on the basis of exemplar sale deeds. A sale deed of the year 1999 which was close to the date of the judgment of the High Court was taken into consideration. The rate of market value at Rs. 125/- sq. ft. was determined. However, the interest 9% and 15% till the year 1999 was not computed for the reason that the market value was determined at the then current rate. The claimant was held entitled for 30% solatium and interest at the rate of 12% per annum from 18.12.1999 i.e. the date on which statement was filed by the Collector till the date of actual payment.

37. Challenging this finding, learned counsel for the appellant U.P. Jal Nigam Sri R.C. Gupta vehemently argued that there were several contradictions in the statement of claimant Shiv Nath Seth and his possession was not found on the spot. The claimant had failed to prove that the sewage pumping station was constructed on his land. In view of the deposition of the officials of revenue department, it was apparent that the possession of Shiv Nath Seth on the spot could not be established in the year 1999 when statement was filed by the Collector. The State of U.P. was not properly represented before this Court in Writ Petition No. 44252 of 1998 and, therefore, in the judgment and order dated 24th November, 1999 it was held that the land on which the sewage plant was constructed, was Bhumidhari land of claimant Shiv Nath Seth. After the direction of the High Court, the District Judge, Jaunpur i.e. the reference court was required to examine as to who was the actual owner of the land in the year 1977-78 i.e. at the time of construction of the sewage plant.

38. Learned counsel for the appellant drew attention of the Court to the statement of Shiv Nath Seth to submit that he had admitted that "Nala" existed at the western side of land i.e. Abadi of Smt. Genda Devi, which was purchased in the year 1962 and the sewage plant was constructed at the eastern side of "Nala". This means that the land purchased by Shiv Nath Seth existed on the opposite side of "Nala" and, therefore, the land on the east of Nala as per the statement of Shiv Nath Seth itself was not purchased by him. He further submits that Shiv Nath Seth further admitted in the cross-examination that no sale deed was executed for the land which lies at the western side of "Nala". As the claimant Shiv Nath Seth could not prove his title, the findings arrived at by the reference court are a result of misreading of the oral and documentary evidences led by the parties. Sufficient material was brought on record to establish that

there were other claimants, who were entitled for compensation, but the reference court illegally overlooked these materials.

39. However on the quantum of compensation, the counsel for the appellant did not extend his argument and, therefore, it is concluded that the appellants are not aggrieved by the quantum of compensation/market value determined by the reference court.

40. As regards the dispute of ownership of the land in question, the oral deposition of Shiv Nath Seth, the claimant and the material brought by him on record are required to be examined.

41. In his statement-in-chief, Shiv Nath Seth had deposed as follows:--

42. He further proved the documents filed by him in his oral deposition and goes on to say:--

43. In his cross examination, he again stated as under:--

44. Having carefully read the oral deposition of claimant Shiv Nath Seth, it is evident that he categorically deposed in his examination-in-chief that the land on four sides of sewage plant belonged to him. The land on which sewage plant was constructed in the year 1977-78 existed over 8 decimal area of three plot Nos. 12/164, 13/165 and Arazi No. 2 which were purchased by him through one sale deed of the year 1962 executed by one Smt. Genda Devi. On the west side of "Nala" there existed "Abadi Hata" of Smt. Genda Devi, which was purchased by him through the said sale deed. The boundaries of the land owned by him were proved in his categorical statement. In the cross-examination, he proved that he got the sale deed of 24 decimal area of 3 plots as stated above. Arazi No. 2 which existed at the south of Arazi No. 13/165 was sold to one Smt. Bhagwan Dei whereupon she had constructed her house. He categorically stated that he did not execute any sale deed for the land which existed at the west side of "Nala". This statement was wrongly interpreted by the learned counsel for the appellant to submit that Shiv Nath Seth admitted that the land on west side of "Nala" did not belong to him. The sentence is with reference to the sale deed executed by Shiv Nath Seth in the name of Bhagwan Dei. He stated that he gave possession of a portion of Arazi No. 2 of his Bhumidhari land by way of an agreement to sell to Smt. Bhagwan Dei, but he did not execute any sale deed for the said land and further no sale deed was executed by him for the land which lies at the western side of "Nala". In his oral deposition, he had disclosed the boundaries of the plots which were purchased by him prior to the construction of the sewage plant.

45. Thus it is found that the oral deposition of Shiv Nath Seth in his examination-in-chief and cross-examination is not at variance as suggested by learned counsel for the appellant. No other point was pressed by the learned counsel for the appellant.

46. Further the documentary evidence namely the sale deed dated 23.11.1962

further disclosed that three plots were purchased by Shiv Nath Seth, the boundaries of which are as under:--

47. It is further evident from the records that the sewage plant was constructed at the west side of "Nala", which means over the land of Shiv Nath Seth which was subject matter of the sale deed of the year 1962 executed in his name.

48. This apart, there is ample evidence on record that the name of Shiv Nath Seth was entered into the revenue records as Bhumidhar in the year 1386 and 1391 fasli after expunging the name of his vendor Smt. Genda Devi. His abadi continued to be recorded from 1387-1404 fasli and for the first time in 1404 fasli over 4 decimal area, the entries of sewage pumping station was incorporated.

49. Thus from the appreciation of the oral and documentary evidences on record, there is no doubt about the findings recorded by the reference court that the sewage plant was constructed over the land of claimant Shiv Nath Seth. So far as the dispute raised with regard to the area on which sewage pumping station was constructed, no material was brought on record to establish otherwise. The report of Advocate Commissioner namely Jay Prakash Singh which was proved in evidence does indicate that the sewage pumping station was constructed in 8 decimal area of three plots which belonged to Shiv Nath Seth. No other contradictory evidence/report is on record.

50. In view of the above discussion with reference to the material on record, the findings recorded by the trial court are affirmed.

51. The arguments of learned counsel for the appellant on the contrary are found misconceived.

52. There is no dispute about the fact that no proceeding whatsoever had been undertaken for acquisition of the land in question for construction of sewage pumping station in the year 1977-78.

53. This Court in a writ proceeding between the parties had already held that the compensation at the current market value was required to be determined by the reference court in view of the fact that it has been a case of usurpation of land rather than acquisition in accordance with law.

54. It is further noteworthy that the State Government has not filed an appeal to challenge the award of the reference court.

55. The present appeal is filed by the U.P. Jal Nigam, which could not establish that there was any illegality or error in the order of the reference court. There is no merit. The appeal is dismissed.

56. The claimant respondent is held entitled to the compensation as determined by the reference court, which shall be released by the concerned authorities, forthwith.