(2015) 02 AHC CK 0193

In the Allahabad High Court

Case No : First Appeal No. 808 of 2000

National Thermal Power Corpn. APPELLANT

Vs

Kailash Narain Garg and Others RESPONDENT

Date of Decision : 04-02-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96
Land Acquisition Act, 1894 — Section 17(1), 18, 4, 4(1), 51-A
Registration Act, 1908 — Section 57

Citation : (2015) 5 ADJ 436 : (2015) 111 ALR 536 : (2015) 129 RD 165

Hon'ble Judges : Vikram Nath, J;Dinesh Gupta, J

Bench : Division Bench

Advocate : N. Lal, Arvind Kr. Shukla, Neeraj Tiwari, Prabhat Mishra, Prashant Mishra, S.P. Gupta, Arvind Verma, S.I. Ibrahim and Preetika Dwivedi, for the Appellant; L.P. Singh, K.K. Tripathi, L.K. Singh, Murlidhar, V.K.S. Chaudhary and H.N. Singh, Advocates for the

Final Decision : Partly Allowed

Judgement

Vikram Nath, J—This first appeal under Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as the L.A. Act) read with Section 96 of the Civil Procedure Code, 1908, has been preferred by the Power Grid Corporation of India Ltd., assailing the correctness of the award dated 9.5.2000 of the Land Acquisition Tribunal/IV-Additional District Judge, Kanpur Nagar passed in Reference Case/Claim Petition No. 83/70 of 1988, Kailash Narain Garg and others v. State of U.P. and another, whereby it held the claimants to be entitled to compensation @ Rs. 57,000/- per bigha and in addition thereto 12% additional amount from 23.6.1984, being the date of publication of the notification, under Section 4(1) of the L.A. Act, till 4.4.1985, being the date of taking possession, and 30% solatium. Tribunal further directed that the claimants would be entitled to the interest @ 9% for a period of one year from the date of taking possession i.e. 4.4.1985 and further 15% interest from 4.4.1986 till the date of payment on the excess market value awarded by the reference Court. For purposes of construction of a 400 KV Power Plant by National Thermal Power Corporation (NTPC) in District Kanpur Nagar, 143.34 acres land was sought to be acquired. The Provision of Section 17(1) of the L.A. Act were made applicable. Notification under Section 4(1) of the L.A. Act was published in the official gazette on 23.6.1984. Thereafter the notification under Section 6(1) of the L.A. Act was published in the gazette on 23.7.1984. Out of the total land sought to acquired, possession over 18.21 acres of land was taken on 27.8.1984 and with regard to the remaining 125.13 acres land the possession was taken on 4.4.1985. The Special Land Acquisition Officer after considering the material on record gave the award dated 25.11.1985 and allowed compensation for the land at Rs. 9,333/- per bigha.

2. The claimants preferred reference under Section 18 of the L.A. Act. The reference Court allowed the reference and determined the rate of the land to be Rs. 57,000/- per bigha by the impugned award dated 9.5.2000. The reference Court relied upon the sale-deed (Ex. 1) which is dated 24.7.1984 whereby 12 biswas land of Plot No. 693 and 694 situate in Village Sachendi has been sold for Rs. 48,000/- According to the sale-deed a bigha would value Rs. 80,000/-. The reference Court reduced 10% from the value per bigha on account of the fact that the sale-deed was subsequent (about 1 month later) from the date of the notification under Section 4(1) of the L.A. Act. It further reduced the value by 20% on the ground of smallness of the area which would bring down the value to Rs. 56,000/- per bigha and for the above deductions the reference Court after rounding off determined the market value of the land acquired to be Rs. 57,000/- per bigha.

3. By means of this appeal the challenge is to the compensation awarded by the reference Court as being highly excessive.

4. We have heard Sri Arvind Verma, learned Senior Counsel assisted by Mrs. Preetika Dwivedi, Sri Prashant Mishra and Sri S.I. Ibrahim, Advocates appearing for the appellant and Sri H.N. Singh, learned Senior Counsel assisted by Sri Laxmikant Singh, Advocate, appearing for the respondents.

5. We have also perused the material on record.

6. Before reference Court there were five sale-deeds, three (Ex. Ka-1, Ka-2, Ka-3) filed by the State/appellant Power Grid Corporation and two sale-deeds by the claimants (Ex. 1 & 2). In addition to the above the claimants had also filed certified copy of the award dated 28.8.1987 in L.A. Reference No. 53 of 1983 in reference proceedings (Ex. 3) relating to acquisition for NTPC in village Gangaganj Panki, district Kanpur Nagar whereby the reference Court had determined the compensation of the land @ Rs. 45 per sq. yard. The following comparative table will display the facts and figures relating to the evidence produced by the parties before the reference Court:

7. The Special Land Acquisition Officer while determining the compensation, relied upon the sale-deed dated 18.10.1983 (Ex. Ka-2) and determined the

compensation payable @ Rs. 9,333/- per bigha. Before the Special Land Acquisition Officer there were 28 sale-deeds referred to as per Schedule-II. However after rejecting the other sale-deeds only three were found to be worth consideration. Out of these three Ex. Ka-2 was relied upon.

8. Before the Reference Court three sale-deeds were filed by the State/Power Grid Corporation, namely, Ex. Ka-1, Ka-2, Ka-3 whereas the claimants filed two sale-deeds Ex.-1 and Ex-2 and one order of the Reference Court Ex.-3. The rate per bigha from all the sale-deeds and also the Reference Court is given in the table mentioned earlier in the judgment. The three sale-deeds filed by the State/ Power Grid Corporation Ex. Ka-1, Ka-2, Ka-3 depict a very low rate as consideration. Further we had called for the original map to identify the location of the said three plots covered by the three sale-deeds filed by the State/Power Grid Corporation Ex. Ka-1, Ka-2, Ka-3 and we find that the land covered by these three sale-deeds was situated at a substantial distance from the land acquired. The two sale-deeds filed by the land owners-claimants (Ex. 1 and Ex. 2) relate to the land situate close to the acquired land but the only reason for attacking the sale-deeds by the appellant is that they were subsequent to the notification under Section 4(1) of the LA Act.

9. Before proceeding to deal with the reasons for accepting the sale-deeds relied upon by the claimants although executed subsequent to the publication of the notification under Section 4(1) of the LA Act we may also deal with the order of the Reference Court (Ex. 3). The Ex. 3 is an order passed in reference proceedings relating to a notification issued with regard to the land acquired for N.T.P.C. for expansion of its Panki Thermal Power Station and relates to a land situated in Village Gangaganj. It is not disputed that Village Gangaganj is situated quite at a distance from Village Sachendi where the land in dispute was acquired and secondly Village Gangaganj is nearer to Kanpur City and as such the value of the land cannot be said to be comparable to the value of the land situated in Village Sachendi which has been acquired. Therefore, we find ourselves unable to place reliance on the Reference Court order (Ex. 3) relating to acquisition of land in Village Gangaganj.

10. The first question which arises is whether a sale-deed/exemplar relied upon by the parties, executed after the notification under Section 4(1) of the L.A. Act would be admissible in evidence and relied upon or not? There is no bar under the L.A. Act for not accepting into evidence a sale-deed as an exemplar for determining the market value which may have been executed after the notification under Section 4(1) of the L.A. Act. There is likelihood and possibility that the sale-deed executed subsequent to the notification, under Section 4(1) of the L.A. Act, may not depict the true market value and it could be highly inflated in order to derive unwarranted and excessive compensation i.e. to say that such a sale-deed could be mala fide or with oblique motive in order to enure excessive compensation. It is therefore imperative that where such a sale-deed is to be considered then the Courts should be cautious and careful in relying upon them.

Such sale-deeds should be put to strict proof of its genuineness and bona fide.

11. Now coming to the question as to whether the sale-deeds executed subsequent to the publication of the notification under Section 4 of the L.A. Act can be relied upon or not. As already observed above the L.A. Act does not impose any bar or embargo upon consideration of such subsequently executed sale-deeds but it goes without saying that where a subsequent sale-deed is to be taken into consideration, as an exemplar, the Court should be cautious and careful in accepting such a sale-deed and should also allow sufficient discount while determining the rate on the basis of such sale-deed.

12. Sri H.N. Singh, learned Senior Counsel for the respondents has placed reliance upon a judgment of the Apex Court in the case of Mehta Ravindrarai Ajitrai (Deceased) by Lrs and Others Vs. State of Gujarat, AIR 1989 SC 2051 : (1989) 3 JT 321 : (1989) 2 SCALE 296 : (1989) 4 SCC 250 : (1989) 3 SCR 743 : (1989) 2 UJ 547 , for the proposition that after considering various factors the Supreme Court held that an agreement of sale relating to adjacent land, although executed after five months of the notification under Section 4 of the L.A. Act and the sale-deed having been executed after about a year, could not be ignored and relied upon for purposes of determining the correct market value. The paragraph 5 of the report is reproduced below:

"5. Keeping these factors in mind, we feel that although the instance reflected in the sale-deed (Exhibit 152) and the agreement for sale in connection with that land, pertains to a sale after the acquisition, it can be fairly regarded as reasonably proximate to the acquisition and, in the absence of any evidence to show that there was any speculative or sharp rise in the prices after the acquisition, the agreement of sell dated January 21, 1957 must be regarded as furnishing some light on the market value of the land on the date of publication of S. 4 notification. However, certain factors have to be taken into account and appropriate deductions made from the rate disclosed in the said agreement to sell in estimating the market value of the land with which we are concerned at the date of the acquisition. One of these factors is that there seems to have been some rise in the price of land on account of the acquisition of the land in question before us for purposes of constructing an industrial estate. Another factor is that the land proposed to be purchased under the said agreement to sell was adjoining the land of the purchaser and the purchaser might have paid some extra amount for the convenience of getting the neighbouring land."

13. Sri Arvind Verma, learned counsel for the appellant relying upon Section 51-A of the L.A. Act has placed reliance upon a judgment of the Apex Court in the case of Cement Corporation of India Ltd. Vs. Purya and Others, (2004) 8 JT 327 : (2004) 8 SCALE 558 : (2004) 8 SCC 270 : (2004) AIRSCW 5534 : (2004) 7 Supreme 711 , for the proposition that as the sale-deeds filed by the claimants had not been duly proved, it could not be relied upon.

14. On the other hand, Sri H.N. Singh, learned Senior Counsel appearing for the

claimant-respondents has submitted that unless and until the party objecting to the sale-deeds led any evidence in rebuttal or to disprove that the transaction was not a fair transaction, Section 51-A of the L.A. Act ensures to the benefit of the claimants and the sale-deeds filed by them could not be ignored.

Section 51-A of the LA Act reads as follows:-

"[51 A. Acceptance of certified copy as evidence. - In any proceeding under this Act, a certified copy of a document registered under the Registration Act, 1908 (16 of 1908), including a copy given under Section 57 of that Act, may be accepted as evidence of the transaction recorded in such document]."

15. The Constitution Bench of the Apex Court in the case of Cement Corporation (supra) after considering in detail the law relating to interpretation of Section 51-A of the L.A. Act approved the view taken in the case of Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, AIR 2001 SC 1117 : (2001) 3 JT 157 : (2001) 2 SCALE 257 : (2001) 3 SCC 530 : (2001) 2 SCR 141 : (2001) 2 UJ 997 : (2001) AIRSCW 867 : (2001) 2 Supreme 187 . The Constitution Bench was dealing with the conflict in the views between the two three-Judge Benches of the Supreme Court in the case of Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., AIR 1997 SC 2625 : (1997) 5 JT 580 : (1997) 4 SCALE 326 : (1997) 6 SCC 41 : (1997) 3 SCR 1107 : (1997) AIRSCW 2584 : (1997) 6 Supreme 150 and Narasaiah case (supra). It approved the view taken in Narasaiah case which is quoted in paragraphs 29, 30, 31, 32 and 33. The conclusion drawn in paragraphs 32 & 33 are reproduced below :

"32. Therefore, we have no hesitation in accepting this view of the Court in Narasaiah case as the correct view.

33. The submission of Mr. G. Chandrashekhar to the effect that the contents of a sale-deed should be a conclusive proof as regards the transaction contained therein or the Court must raise a mandatory presumption in relation thereto in terms of Section 51-A of the Act cannot be accepted as the Court may or may not receive a certified copy of sale-deed in evidence. It is discretionary in nature. Only because a document is admissible in evidence, as would appear from the discussions made hereinbefore, the same by itself would not mean that the contents thereof stand proved. Secondly, having regard to the other materials brought on record, the Court may not accept the evidence contained in a deed of sale. When materials are brought on record by parties to the lis, the Court is entitled to appreciate the evidence brought on record for determining the issues raised before it and in the said process, may accept one piece of evidence and reject the other."

16. We may further refer to paragraph 39 of the report in the case of Cement Corporation of India Ltd. (supra) which lays down that the presumption to the genuineness of the documents can be relied upon only if such presumption is not rebutted by any other evidence. Paragraph 39 of the report is reproduced below:

"39. While it is clear that under Section 51-A of the L.A. Act a presumption as to the genuineness of the contents of the document is permitted to be raised, the same can be relied upon only if the said presumption is not rebutted by other evidence. In the said view of the matter we are of the opinion that the decision of this Court in the case of Land Acquisition Officer & Mandal Revenue Officer v. V. Narasaiah, lays down the correct law."

17. Now coming back to the sale-deed Ex. 1 we find that it is dated 24.7.1984 one month after the publication of the notification under Section 4 of the LA Act. Learned counsel for the appellant has not been able to show from the record that the genuineness of the transaction of the sale-deed Ex. 1 was doubted. In absence of the same the credibility of the said transaction could not be discarded unless and until it could be shown otherwise from the transaction itself or other material on record. The Reference Court has given sound reasons for relying upon the said sale-deed.

18. The Reference Court allowed discount of 10% for the reason that the sale-deed was subsequent transaction after publication of the notification under Section 4 of the L.A. Act. From a comparison of the rate per bigha at which the transactions have been recorded in the five sale-deeds filed by both the parties, we find that the escalation of price in the two sale-deeds filed by the claimants is very high as compared to the three sale-deeds filed by the State/Power Grid Corporation.

19. We are therefore of the view that the discount of 10% needs to be increased and it should be 25% so that a fair and just market value could be assessed. We further find that the Reference Court has allowed a further discount of 20% on the smallness of the area covered by the sale-deeds which we find to be reasonable. Total deduction to be made is 45%. The rate indicated in the sale-deed Ex-1 is Rs. 80,000/-. The deduction would come to Rs. 36,000/-. We thus, hold that the rate at which compensation should be determined is Rs. 44,000/- per bigha. Further it has been brought to our notice that some of the claimants-respondents died during the pendency of the appeal. Applications were filed by the respondents and the heirs of the deceased respondent giving the details. These applications be treated as substitution applications and the heirs of deceased respondents be brought on record accordingly. Counsels for both the sides have agreed to this procedure being adopted.

The appeal stands partly allowed as above.

