

(2009) 06 SHI CK 0023
In the High Court Of Himachal Pradesh

Sh. Chaman Lal alias Chaman Singh	APPELLANT
Vs	
Collector, Land Acquisition, HPPWD and Another	RESPONDENT

Date of Decision : 23-06-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (2009) 06 SHI CK 0023

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Judgement

Sanjay Karol, J.—The claimant-appellant has assailed the impugned award dated 15.9.2000 passed by Addl. District Judge, Mandi in Land Reference Case No. 60/1993, titled as Chaman Lal alias Chaman Singh v. Collector Land Acquisition, HPPWD, Mandi, Distt. Mandi, H.P. and Anr. The claimant is aggrieved of the fact that the Court below has not considered the relevant sale deeds referred to and relied upon by him for the reason that the vendor and the vendee were not produced to prove the same.

2. For the public purpose namely construction of "Jogindernagar- Jimjima Road" the State Government intended to acquire the claimant's land in question. The notification dated 6.2.1992, issued u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) was published in the H.P. Rajpatra on 15.2.1992. The Collector Land Acquisition passed his award No. 15 of 1992 on 30.5.1992. The Collector passed the award by determining different rates of market value for different categories of land. With regard to the trees existing on the acquired land the Collector passed the award as under:

V. HOUSE/STRUCTURE AND TREES:

No house/structure is being acquired. However some Fruit/non fruit trees are being acquired but assessment of the department expert is awaited as such supplementary award will be announced after receipt of assessment from the department expert.

2. Undisputedly no separate award for the fruit bearing trees was passed by the authorities.

3. Aggrieved of the same, the claimant filed Land Reference Petition u/s 18 of the Act claiming enhancement of compensation towards the (i) market value of the land; and also the damage caused to the (ii) super-structure/house built on the land adjoining to the acquired land; (iii) un-acquired adjoining land due to the throwing of debris; (iv) due to the severance of the land; and (v) compensation for the trees existing on the acquired land.

4. The said land reference petition stands decided in terms of the impugned award.

5. The claimant undisputedly placed on record sale deeds dated 16.3.1991 (Ext.PA) and dated 1.8.1990 (Ext. PD) and the respondents placed on record sale deeds dated 13.12.1990 (Ext.RA) and dated 12.2.1990 (Ext. RB). The same were not considered by the Court below for the reason that the said sale deeds were not proved in accordance with law, as neither the scribe nor the vendor or vendee had been examined to prove the same.

6. The Apex Court in Cement Corporation of India Ltd. Vs. Purya and Others, after referring to and relying upon its earlier decisions in: M.S. Madhusoodhanan and Another Vs. Kerala Kaumudi Pvt. Ltd. and Others, ; Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, ; A.P. State Road Transport Corporation, Hyderabad Vs. P. Venkaiah and others, ; Meharban and others etc. etc. Vs. State of U.P. and others, ; Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., ; Indore Development Authority Vs. Satyabhama Bai (Smt) and Others, ; Kummari Veeraiah and Others Vs. State of A.P., ; P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, ; Inder Singh and Others Vs. Union of India (UOI) and Others, ; Mangaldas Raghavji Ruparel and Another Vs. The State of Maharashtra and Another, and Madamanchi Ramappa and Another Vs. Muthalur Bojjappa, wherein conflict of the issue in question had arisen, held as under:

Kurra Sambasiva Rao case (supra) and other cases which fall in line with the view taken therein proceeded on the basis that prior to the insertion of Section 51-A in the LA Act, the Evidence Act did not permit the production of a certified copy of the registered sale transaction in evidence. Therefore, by the insertion of Section 51-A the legislature merely enabled a party to get over that problem and thereafter, according to the said judgment, the party concerned had to prove the contents of the document by adducing oral evidence separately. The said view is not the correct position in law. Even prior to the insertion of Section 51-A of the Act the provisions of the Evidence Act and the Registration Act did permit the production of a certified copy in evidence. This has been clearly noticed in the judgment in Narasaiah case (supra)

Whenever a transaction evidenced by a sale deed is required to be brought on

record, the execution thereof has to be proved in accordance with law. For proving such transaction, the original sale deed is required to be brought on record by way of primary evidence. Only when primary evidence is not available, a certified copy of the sale deed can be taken on record. Such certified copies evidencing any transaction are admissible in evidence, if the conditions precedent therefore in terms of Section 75 of the Evidence Act are fulfilled. Evidences are of different types. They may be direct, indirect or real evidence. The existence of a given thing or fact is proved either by its actual production or by the testimony or admissible declaration of someone who has himself perceived it. Such evidence would be direct evidence. Presumptive evidence which is an indirect evidence would mean that when other facts are, thus, proved, the existence of the given fact may be logically inferred. Although the *factum probandum* and the *factum probantia* connote direct evidence, the former is superior in nature. The terms "primary and secondary evidence" apply to the kinds of proof that may be given to the contents of a document, irrespective of the purpose for which such contents, when proved, may be received. Primary evidence is an evidence which the law requires to be given first; secondary evidence is evidence which may be given in the absence of that better evidence when a proper explanation of its absence has been given. Section 51-A of the Land Acquisition Act seeks to make an exception to the aforementioned rule.

In the acquisition proceedings, sale deeds are required to be brought on record for the purpose of determining market value payable to the owner of the land. In terms of Section 51-A the certified copies may be brought on record evidencing a transaction and may be accepted as evidence thereof. Acceptance of an evidence is not a term of Article It has an etymological meaning. It envisages exercise of judicial mind to the materials on record. Acceptance of evidence by a court would be dependent upon the facts of the case and other relevant factors. A piece of evidence in a given situation may be accepted by a court of law but in another it may not be.

Section 51-A of the LA Act may be read literally and having regard to the ordinary meaning which can be attributed to the term "acceptance of evidence" relating to transaction evidenced by a sale deed, its admissibility in evidence would be beyond any question. For bringing a documentary evidence on the record, the same must not only be admissible but the contents thereof must be proved in accordance with law. But when the statute enables a court to accept a sale deed on the records evidencing a transaction, nothing further is required to be done. Even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof. This, however, would not mean that the contents of the transaction as evidenced by the registered sale deed would automatically be accepted. The legislature advisedly has used the work "may". A discretion, therefore, has been conferred upon a court to be exercised judicially i.e. upon taking into consideration the relevant factors.

The reasoning in Narasaiah case (*supra*) that Section 51-A enables the party

producing the certified copy of a sale transaction to rely on the contents of the document without having to examine the vendee or the vendor of that document, is the correct position in law.

However, the respondent's contention 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, 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 the 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.

Although u/s 51-A 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.

...While the certified copies of the sale transactions produced by the respondent should be looked into as evidence produced by a party the evaluation of such evidence should be made taking into consideration other evidence if available on record like other sale transactions that may be produced, the comparative nature of the location, suitability, marketability, etc. to fix the market value of the land acquired.

7. Regretfully the ratio of law laid down by the Court in earlier decision was not considered by the Court below at the time of passing of the impugned award. The position of law having been changed the impugned order needs to be set aside.

8. The Court below has also not considered the report produced by the claimant to establish the damage caused to the claimant's land and super-structure. It further erred in coming to the conclusion that the petitioner failed to prove the loss caused to him towards the fruit bearing and non fruit bearing trees. The Collector himself had noticed in his award that fruit/non fruit bearing trees were in existence on the acquired land and a separate award with respect thereto, was to be passed after assessing the value of the same.

9. For the aforesaid reasons the impugned order is set aside. The matter is remanded back to the Court below. Liberty granted to the parties to lead additional evidence, if need so arises.

10. The original reference petition is restored to its original position. Parties shall appear before the concerned Court on 10th August, 2009.

11. Since the acquisition proceedings pertain to the year 1992 the Court below

shall endeavour to decide the reference petition as early as possible. The Registry is directed to send the entire record alongwith a copy of this order immediately.