

(2007) 04 J&K CK 0013
In the Jammu And Kashmir High Court

Shanti Devi

APPELLANT

Vs

Collector Land Acquisition

RESPONDENT

Date of Decision : 21-04-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (2007) 2 JKJ 340

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.—This civil first appeal is directed against the award / judgment dated 24th of August, 2000 passed in file No. 10

LAA, date of Institution 8th of March, 1995, titled as Shanti Devi v. Collector whereby and where under compensation was enhanced from Rs.

10,000/- to Rs. 40,000/- per Kanal, for short ""impugned award"".

2. Brief facts of the case are as under:

Land of appellant came to be acquired in terms of the provisions of Land Acquisition Act, and an award came to be passed. The appellant

disputed the adequacy of compensation and made an application before the Collector (Assistant Commissioner (R) Land Acquisition, Udhampur

for making reference to the District Court in terms of Section 18 of the Land Acquisition Act for enhancement of the compensation for land

measuring 6 kanals falling in Khasra No. 276 and 277 situated at village Roun Tehsil Udhampur. Accordingly, reference came to be made.

Respondents filed objections and following issues came to be framed on 1st of February, 1996:

1. Whether

compensation is inadequate, if so what was the market value of the land acquired?

OPP

2. Relief.

3. Parties were directed to lead evidence. Appellant-claimant examined witnesses but the respondents have failed to lead any evidence in rebuttal.

This is how the evidence of the appellant has remained un-rebutted.

4. After scanning the evidence and consideration, Reference Court-District Court passed the impugned award.

5. Feeling aggrieved, the appellant has preferred this appeal and has assailed the impugned award on various counts.

6. Learned Counsel for the appellant argued that the appellant was entitled to Rs. 1.00 lac as compensation per kanal but the District Judge has

wrongly enhanced compensation only up to Rs. 40,000/- per kanal despite of the fact that there was cogent proof on the file for enhancing the

compensation to Rs. 1.00 lac.

7. Learned Counsel for the respondents argued that the appellant was not entitled to Rs. 40,000 per kanal as compensation and respondents have

already file a Cross Appeal and argued that the appeal be dismissed and Cross appeal be allowed.

8. The meat of the matter is whether the impugned award is legal? In order to thrash out this question it is necessary to go through the evidence

recorded by the Reference Court-District Court.

9. PWs- Sudershan Kumar, Thoru Ram, Sham Lal, Ashok Kumar, Vijay Kumar and Gulab Chand have deposed that Collector had not awarded

the compensation rightly. The market value of the land was in between Rs. 40,000/- to Rs. 50,000/- approximately at the particular point of time.

They have deposed that the potential value of the land was high and its market value is increasing day by day.

10. It is worthwhile to mention herein that reasons given by the Reference court are plausible, need no interference.

11. There is no proof on the file which could have been made basis for awarding Rs. 1.00 lac as compensation per kanal. The burden to discharge

the onus was on the appellant-claimant and the claimant had to prove that what the willing-buyer would have offered to willing seller. The evidence

on this point is lacking. No doubt, copies of some sale deeds are on the file but that too of a small portion of land. Even the contents of the sale

deeds have not been proved. The fact of the matter is that there is evidence on the file that market rate of land was in between Rs. 40,000/- to Rs.

50,000/-.

12. In the given circumstances, I am of the considered view that the appeal in hand deserves to be dismissed.

Cross Appeal/Objections.

13. This cross appeal came to be filed on 30th of July, 2001. The main appeal titled above came to be filed on 27th of November, 2000 and

notice came to be issued on 11th of December, 2000. Mr. A. Kapoor, AAG appeared on behalf of respondents along with Mr. M. L. Sharma,

Head Quarter Assistant to Dy. Commissioner, Udhampur before the Registry on 13th of January, 2001. This appeal came to be admitted on 13th

of February, 2001 and fresh notice came to be issued to the respondents. Mr. A. Kapoor, AAG appeared before the Court on 4th of April,

2001. In terms of Order XXXI Rule 22 of the Civil Procedure Code, for short, ""CPC"", Cross appeal is to be filed within one month from the

date of service of notice of Appellate Court. Mr. Kapoor has caused appearance, as stated hereinabove, before the Registry on 13th of January,

2001 and caused appearance before the Court on 4th of April, 200. Cross appeal/ Objections came to be filed after time frame. It came to be filed

in the month of July, 2001. Thus is patently time barred.

14. In the given circumstances, Cross Appeal is time barred. Accordingly, it is dismissed as time barred.

15. Having glance of the above discussion, CIA No. 49/2000 and Cross Appeal No. 32/2001 are accordingly dismissed along with all CMPs.

Send down the records.