
(2013) 11 AHC CK 0060
In the Allahabad High Court
Case No : First Appeal No. 741 of 1993

Shiam Bihari Lal and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Citation : (2014) 102 ALR 38 : (2014) 1 AWC 450 : (2014) 122 RD 229 : (2014) 2 UPLBEC 1272

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : Sankatha Rai, Vinod Kumar Rai and Ashok Kumar Singh, for the Appellant;

Final Decision : Dismissed

Judgement

B. Amit Sthalekar, J.—This first appeal arises out of the judgment of the 1st Additional District Judge, Varanasi dated 4.3.1983. The facts of the case in brief are that a land acquisition notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act, 1894) was issued on 29.11.1978 and the notification u/s 6 of the Act, 1894 was issued on 19.6.1979. The land of the appellant fell within the ambit of this land acquisition notification. The area of land of the appellant measuring 0.66 acres was situated in village Bhagatpur Pargana Sheopur, District Varanasi. The Land Acquisition Officer gave his award and the compensation awarded under the award was at the rate of Rs. 175.48 paise per decimal. Aggrieved by the amount of compensation under the award, the appellant (Shyam Behari Lal, now deceased) filed land acquisition reference in the Court of 1st Additional District Judge, Varanasi. The following issues were framed:

1. What was the market value of the property acquired on the date of notification u/s 4 of the Land Acquisition Act?
2. Whether the claimants are not entitled to enhancement as alleged in para 7 of

the written statement?

3. To what amount of compensation, if any, are the claimants entitled?

2. With regard to the issue No. 1, namely, the market value of the property in question, according to the appellant, market value of the land in question should have been between Rs. 6,000/- to Rs. 8,000/- per biswa. In support of this claim the appellant relied upon the exemplar in the nature of a sale-deed dated 24.1.1978 executed by one Smt. Kamla Devi in favour of Sachchidanand, Vibhuti Narain and Janranjan, which was with regard to 2 biswa of land of Plot No. 261 and the same was sold for Rs. 12,000/- i.e., at the rate of Rs. 6,000/- per Biswa.

3. The case of the appellant further is that the land in question was situated at a distance of about two furlongs from the Sheopur market and used to yield three crops in a year. In his cross-examination, he has further stated that some land was also grove.

4. On behalf of the respondents, reliance was placed on a judgment dated 28.8.1982 passed in another Land Acquisition Reference No. 212 of 1980, Ram Lakhan v. Collector, in which compensation was awarded at the rate of Rs. 350/- per decimal of land of this very Scheme.

5. The further objection of the respondent was that the sale-deed in respect of the land of Smt. Kamla Devi cannot be relied upon as an exemplar as the said sale-deed was executed on 24.1.1978, i.e., prior to the notification u/s 4 of the Act, 1894.

6. The Court below after hearing the parties and having gone through the evidence on record, further relying upon a decision awarded in a similar Land Acquisition Reference No. 212 of 1980, Ram Lakhan v. Collector has enhanced the compensation entitlement of the appellant to Rs. 350/- per decimal besides solatium at 15% and interest at the rate of 6% per annum from the date of possession till the date of payment or deposit in the Court.

7. I have heard Sri Vinod Kumar Rai, learned Counsel for the appellant and Sri Siddharth Singh Shrinet, learned Standing Counsel appearing on behalf of the respondents.

8. The learned Counsel for the appellant has referred to the oral testimony of the appellant Shyam Behari (now deceased) which was filed as paper No. 27 Ka in the proceedings in the Court below dated 22.2.1983, copy of which has been filed at page 8 of the appellant's paper book. It is submitted by the learned Counsel that the land in question was situated in village Bhagatpur Pargana, Sheopur. It has also been stated that the said plot is about two furlongs from the Sheopur Bazaar and that the appellant is growing three crops and vegetables in a year. It has also been stated that the said land is on the border of village Sheopur and the said border of the three villages is about 40 feet from the plot in question. In cross-examination the appellant has further stated that he is not able to state whether the prices of the surrounding land began to increase or not

when construction of a 100 feet wide road was commenced. He has also stated that the land of Kamla Devi is situated on the same 100 feet wide land and his land was also acquired for construction of the 100 feet wide land. Further neither in his statement nor cross-examination has the appellant stated as to what was the distance between his land and the land of Kamla Devi.

9. The appellant has also placed reliance upon the sale-deed executed by Kamla Devi on 24.1.1978 in favour of Sachchidanand, Vibhuti Narain and Janranjan. This sale-deed was executed on 24.1.1978 and its registry was done on 2.2.1978, copy of this sale-deed was filed as paper No. 25 Ga in the reference proceeding and has also been filed at page 18 of the paper book of the appellant. From a reading of this sale-deed, it is noticed that the land of Smt. Kamla Devi was situated in village Sudhipur Pargana, Sheopur. This fact is also admitted by the appellant in his statement paper No. 27 Ka, wherein, he has admitted that the land of Smt. Kamla Devi is situated in Village Sudhipur. However it is to be noted that at page 8 of the appellant's paper book, he has also admitted that the said land was a grove land.

10. Learned Counsel for the appellant then sought to draw the attention of the Court to the geographical location of the land of Smt. Kamla Devi, mentioned in the exemplar, wherein, it has been stated that to the north of the said land is an over head bridge across the road which is 30 metres wide, i.e., 100 feet. From this, it has sought to be stressed by the learned Counsel for the appellant that since his land has also been acquired for construction of the railway over head bridge, therefore, he was also entitled to compensation at the rate equivalent to the rate at which the land of Kamla Devi was sold.

11. Sri Sidhartha Singh Shrinet, learned Standing Counsel on the other hand submitted that originally the Land Acquisition Officer had awarded compensation at the rate of Rs. 175.48 per decimal but on the appellant's reference, the 1st Additional District judge, Varanasi by the impugned order dated 4.3.1983 had enhanced the same to Rs. 350/- per decimal and has also awarded solatium at 15% and interest at 6% per annum. In view of the amount of compensation awarded in a similar Land Acquisition Reference No. 212 of 1980, Ram Lakhan v. Collector, wherein, the land which was acquired as that of the appellant, learned Standing Counsel further submitted that from the statement of the appellant Shyam Bihari or from the documents on record, it could not be said that the land of the appellant was adjacent to the land of Kamla Devi, sale-deed of which was executed on 24.1.1978. He further submitted that there is nothing on record to indicate what was the distance between the two plots.

12. I have considered the rival submissions the learned Counsel for the parties and gone through the documents on records and also examined the original records, which were summoned from the Court below.

13. From the statement of late Shyam Bihari-appellant that his land was acquired under the Scheme as in the case of land sold by Smt. Kamla Devi, it may be

noticed that the land of the appellant as well as Smt. Kamla Devi was acquired for the purpose of construction of a 100 feet wide road but there is nothing on record to indicate as to what was the distance between these two plots. The land of Kamla Devi is admittedly situate in village Sudhipur Pargana, Sheopur, District Varanasi whereas the land in dispute is situated in village Bhagatpur Pargana, Sheopur, District Varanasi. Moreover, from the own statement of the appellant, it is noticed that the land of Smt. Kamla Devi situated in village Sudhipur was a grove land. It has nowhere been stated that the land of the appellant was also a grove land. Though the appellant has tried to draw a parallel between the land of Smt. Kamla Devi and his own land by stating that from the sale-deed of Smt. Kamla Devi it is seen that to the north of her land was a over bridge, but so far as his own land is concerned, there is no such statement nor has any site plan been filed by the appellant. It is also to be noticed that in his cross-examination the appellant has stated that previously there was a six feet wide pathway adjacent to his plot but he is unable to state as to whether the value of the adjacent land has increased or decreased after the construction of a 100 feet wide road was begun. The oral testimony of the appellant that the land in question was two furlongs from the Sheopur Bazaar is also not corroborated by any other documentary or oral evidence. On the contrary the learned Court below has relied upon the case of a Land Acquisition Reference No. 212 of 1980, Ram Lakhan v. Collector, wherein a higher compensation of Rs. 350 per decimal was awarded and relying upon the said judgment in the reference case of Ram Lakhan, the Court below has enhanced the compensation awarded by the Land Acquisition Officer from 171.48 per decimal to Rs. 350 per decimal and has further awarded 15% by way of solatium and interest at the rate of 6% from the date of possession till the date of payment or deposit in Court. The appellant has not been able to dispute the fact that the land acquisition reference No. 212 of 1980 which was given in respect of land acquired under the same Scheme as that of the appellant. For reasons stated above, I find absolutely no merit in the appeal and the same is accordingly dismissed.