

(1989) 11 RAJ CK 0048

In the Rajasthan High Court

Case No : Civil First Appeal No's. 17 to 21 and 36 of 1981

State of Rajasthan

APPELLANT

Vs

Jeo Raj and Another

RESPONDENT

Date of Decision : 21-11-1989

Acts Referred:

Constitution of India, 1950 — Article 14
Evidence Act, 1872 — Section 61, 65, 73
Land Acquisition Act, 1894 — Section 51A
Rajasthan Land Acquisition Act, 1953 — Section 23(2), 26, 28
Rajasthan Land Reforms Act, 1956 — Section 1
Registration Act, 1908 — Section 57
Transfer of Property Act, 1882 — Section 11

Citation : AIR 1990 Raj 90 : (1989) 2 RLW 364 : (1989) 2 WLN 550

Hon'ble Judges : Milap Chandra, J

Bench : Single Bench

Advocate : M.C. Bhati, for B.R. Mehta, S.R. Arora, for U.I.T./M.C., Ganganagar, N.B. Kakkar and Mridul Jain, for the Appellant;

Judgement

Milap Chandra, J.—These appeals are against similar awards passed by the learned Civil Judge, Sri Ganganagar dated August 11, 1980 u/s 26, Rajasthan Land Acquisition Act, 1953 (hereinafter to be called as "the Rajasthan Act"). The first five appeals have been filed by the State of Rajasthan against the claimants impleading the Urban Improvement Trust (now Municipal Council), Sri Ganganagar as pro forma respondent. The last appeal has been filed by the claimant for the enhancement of the amount of compensation and grant of solatium and interest. The facts of the cases are similar. They may be summarised thus.

2. With a view to remove residential difficulties of the inhabitants of Sri Ganganagar; adjoining agricultural fields of Chak No. 2e, 3e and 6e were acquired by the State of Rajasthan. The Land Acquisition Officer, Sri Ganganagar calculated compensation @ Rs. 4,775/- per bigha by its award dated October 15, 1976. Aggrieved with his awards, claimants moved applications u/s 17 of the

Rajasthan Act for making references to the District Court, Sri Ganganagar. Accordingly, references were made to the District Court, Sri Ganganagar. Subsequently, they were transferred to the Civil Judge, Sri Ganganagar who was also authorised to entertain and decide the references vide notification No. 4(1) (4) Rev/ Group/1V/ 75 dated March 12, 1975. The claimant-respondents filed their claims claiming compensation @ Rs. 25,000/- per bigha. The Municipal Council, Sri Ganganagar (successor of Urban Improvement Trust) filed its reply admitting that the Urban Improvement Trust, Sri Ganganagar also filed applications u/s 18 of the Rajasthan Act for making references; they were made and were dismissed by the District Judge, Sri Ganganagar. The learned Civil Judge framed issues and recorded the evidence of the parties. After hearing them, compensation was determined @ Rs. 9,500/-per bigha with solatium @ 10% and interest @ 6%. Solatium and interest have not been allowed to the claimant Girdhari Ram (respondent No. 1 in the appeal No. 18/91) on the ground that he was still then in possession of his land. He has filed appeal No. 36/ 81 for the enhancement of the compensation from Rs. 9,500/- to Rs. 12,000/- per bigha and grant of solatium and interest.

3. It has been contended by the learned counsel for the Municipal Council, Sri Ganganagar and Deputy Government Advocate that the learned Civil Judge has seriously erred in enhancing the compensation and in awarding solatium and interest, certified copies of certain sale-deeds in respect of the similarly situated land showing their sale @ Rs. 4000/- per bigha were filed and the learned Civil Judge has not considered them. He also contended that the learned Civil Judge has placed great reliance on the order Ex. 1 of the Land Acquisition Officer, Sri Ganganagar dated April 27, 1979 awarding compensation @ Rs. 9,500/- per bigha without considering the fact that it was given in respect of small pieces of land of better quality. He further contended that learned Civil Judge should not have taken into consideration the certified copies of the sale-deeds filed by the claimants as they were not duly proved and the sales effected through them were against law. He lastly contended that the potential value of the land has also been taken into consideration in the utter disregard of the proviso to Sub-Section (2) of Section 3 of the Rajasthan Act.

4. In reply, it has been contended by the learned counsel for the claimant-respondents that it is clear from the certified copy of the judgment Ex. 1 of the Land Acquisition Officer, Sri Ganganagar dated April 27, 1979 that similar land situated in the adjoining chak No. 6e had fetched price at the rate more than Rs. 15,000/- per bigha even before the date of notification issued in these cases u/s 6 of the Rajasthan Act. He also contended that the learned Civil Judge was not justified in ignoring the other sales-deeds showing the sale of the land at higher rates. It has further been contended that no objection was taken when the certified copies of the sale-deeds were tendered in evidence and exhibited during the statements of the claimants and as such it is not now open to the respondents to contend that they cannot be read in evidence as they were not duly proved by calling their executants or attesting witnesses. He also contended

that under no law the sales effected through these sale-deeds were illegal. He further contended that the learned Civil Judge has not taken into consideration the potential value of the land otherwise he would have awarded compensation at much higher rate. He lastly contended that the claimants are entitled to get solatium @ 30% and interest @ 12% as provided u/s 56(8) of the Land Acquisition Act, 1894 (hereinafter to be called as "the Central Act") as amended by the Land Acquisition (Rajasthan Amendment Act), 1987.

5. In respect of appeal No. 36/ 81, Shri N.L. Kakkar Advocate contended that the learned Civil Judge should have granted compensation at least @ Rs. 12,000/- per bigha, solatium u/s 23(2) of the Rajasthan Act as it was not dependent upon the taking of possession and interest should have also been awarded u/s 28 of the Rajasthan Act as it was admitted by the Urban Improvement Trust, Sri Ganganagar that possession of land was duly taken from the claimant Girdhari Ram and in any view of the matter the land had vested in it.

6. In reply to the aforesaid contentions of the learned counsel for the claimants, the learned counsel for the Municipal Council, Sri Ganganagar and Deputy Government Advocate contended that the provisions of Section 56(8) of the Central Act as amended by the Rajasthan Act of 1987 are not applicable in these cases as the awards in dispute have not been given between April 30, 1982 and September 24, 1984 and Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, has been overruled by Constitution Bench of the Supreme Court in Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc.,

7. The first question for consideration in these appeals is whether the certified copies of the sale-deeds filed by the claimants cannot be read in evidence. It is correct that the executants of all these sale-deeds were not produced before the Civil Judge, Sri Ganganagar. The certified copies of the sale-deeds were tendered in evidence during the statements of the claimants. No objection was taken when these were tendered and exhibited. Section 61, Evidence Act provides that contents of a document may be proved either by primary or secondary evidence. Sections 65 to 73 deal with the conditions and circumstances under which secondary evidence is permissible. The failure to take objection when evidence is first tendered amounts to an admission that the circumstances contemplated exist and the conditions necessary are complied with. In such cases no objection can be taken for the first time in appeal. It has been observed in Gopal Das v. Sri Thakurji, AIR 1943 P. C. 83, as follows: --

".....where the objection to be taken is not that the document is in itself inadmissible but that the mode of proof put forward is irregular or insufficient, it is essential that the objection should be taken at the trial before the document is marked as an exhibit and admitted to the record. A party cannot lie by until the case comes before a court of appeal and then complain for the first time of the mode of proof."

If an objection would have been taken when these certified copies of the sale-deeds were tendered in evidence and exhibited, the claimants would have produced necessary evidence to prove them. It has been observed in *Kalyan Singh Vs. Smt. Chhoti and Others*, , as follows : --

"If in place of primary evidence secondary evidence is admitted without any objection at the proper time then the parties are precluded from raising the question that the document has not been proved by primary evidence but by secondary evidence. But where there is no secondary evidence as contemplated by Section 65 of the Evidence Act then the document cannot be said to have been proved either by primary evidence or by secondary evidence."

8. It may also be mentioned here that the sale-deeds Exs. A/1 to A/4 filed by the Government in cases wherefrom the appeals Nos. 19 to 21 of 1981 have arisen were tendered in evidence and exhibited during the statement of the Patwari Rameshwar Dayal DW/1. Admittedly, he was neither an executant nor an attesting witness of any of these sale-deeds.

9. These certified copies of the sale-deeds were issued by the sub-Registrar, Sri Ganganagar u/s 57, Registration Act. As such they were also admissible u/s 57(5) of the Registration Act.

10. Section 51A, Land Acquisition Act, as amended by Land Acquisition (Amendment) Act, 1984, runs as under: --

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

An appeal is also a proceeding, Reference of *Ram Narain Pathak Vs. Smt. Urmila Devi*, may be made here. It is a well settled law that an appellate court is bound to take into consideration the change in law which has taken place during the pendency of appeal. It has been observed in *Pasupuleti Venkateswarlu Vs. The Motor and General Traders*, as under : --

"The law we have set out is of ancient vintage. We will merely refer to *Lachmeshwar Prasad Shukul v. Keshwar Lal* 1940 FCR 84 , AIR 1941 5 (Federal Court) which is a leading case on the point. Gwyer C.J., in the above case, referred to the Rule adopted by the Supreme Court of the United States in *Patterson v. State of Alabama* (1934) 294 US 600 at p. 607 :

We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered."

The Rajasthan Land Acquisition Act, 1953 stood repealed by the Land Acquisition

(Amendment) Act, 1984 (Central Act No. 68 of 1984) with effect from September 2-4, 1984. This is also clear from the statement of Objects and Reasons given in the Land Acquisition (Rajasthan Amendment) Act, 1987. The provisions of the above-quoted Section 51A of the Central Act are applicable in the present appeals on the certified copies of the sale-deeds filed by the claimants are also admissible in evidence under this section.

11. The second question for consideration is whether the sale-deeds filed by the claimants were contrary to law as the lands were sold through them for the purpose of raising construction and as such cannot be looked into. It is not recited in any sale-deed that the land is being sold for the purpose of raising building thereon. It is simply recited in the sale-deed executed by Daulat Ram in favour of Mangal Ram that in case the vendee raises construction on the land, he will make payment of the amount which may be demanded by the State Government or Municipal Council. This does not mean that the sale of the land was for the purpose of raising construction. In other sale-deeds, it is simply stated in the usual way that the vendee is at liberty to use the land in the manner he may like. It also does not mean that the land is sold for raising construction thereon. Section 90A, Rajasthan Land Revenue Act does not absolutely prohibit use of agricultural land for non-agricultural purpose. Various rules have been framed which permit conversion of agricultural land for many other purposes on certain terms and conditions. A term in the sale-deed directing enjoyment in particular manner is repugnant to Section 11, Transfer of Property Act and it is ignored. It cannot, therefore, be said that the sale-deeds relied upon by the claimants cannot be looked into.

12. The third question for consideration is whether the learned Civil Judge has seriously erred in awarding compensation @ Rs. 9,500/- per bigha. The trial court has based his conclusion on the order of the Land Acquisition Officer, Sri Ganganagar dated April 27, 1979 (Ex. 1) awarding compensation for certain land situated in the adjoining chak 6e. It has been stated in ground (d) of the memorandum of appeals that there is difference of fertility and irrigation prospects of the land situated in chak 6e (of Ex. 1) and the land involved in the appeals. There is no material on the file of any case in support of this ground. On the contrary, the learned Civil Judge, Sri Ganganagar has clearly mentioned in his awards that the learned counsel for the parties admitted before him that the land situated in Chak Nos. 2e, 3e, and 6e are adjacent and similar to each other and are close to the Ganganagar city. Admittedly, the certified copy of the order dated April 27, 1979 of the Land Acquisition Officer, Sri Ganganagar has been filed in each case by the claimant. The relevant portions of this order run as under:-

^^mi iath;d xaxkuxj us miyC/k fjdkMZ ds vk/kkj ij tks lwpuk Hksth gS og fuEu izdkj gS

?ekad vkjkth jft- fnukad eky;fr izfr ch?kk

- 1- 0-02 2400 29&8&63 2000 20]000
- 2- 0-09 2639 10&10&73 6000 13]332
- 3- 2-00 2772 8&11&73 22500 11]290
- 4- 3-14 163 7&1&74 33000 12]222

mi iaft;d xaxkuxj }kjk nh x;h lwpuk dh vkSlr dher 12]000@&;s izfr ch?kk gS tks cgqr vf/kd izrhr gksrh gS A pw?fd fnukad 19&4&75 dh blh U;k;ky; }kjk pd 6 bZ NksVh dh bUgh Hkwfe esa ls iwoZ esa Hkqfe dk eqvкотk 9]500@&;s r; fd;k x;k gS rFkk ml le; 10&10&73 dks 3-03 ch?kk Hkwfe dh dher 32]600 :i;s vkSj 22&2&74 dks 4-19 ch?kk Hkwfe dh dher 50]000 :i;s Fkh tks fd lc jftLV?kj }kjk nh x;h Fkh A bu nksuksa fo?; i{kksa ds vk/kkj ij vkSlr ?e"K% 10]516@&;s] 10]101@&;s izfr ch?kk vkrk gS A fdUrq Hkwfe ds de {ks= dks ns[krs gq, mDr fc?h IEHkor% vf/kd izrhr gksrh gS D;ksafd Hkwfe dk {ks=Qy ftruk de gksxk fc?h dh nj mruh ?ph vkSj p<+h gksxh A vr% pwafd izLrkfor pd 6 bZ NksVh dh Hkwfe dk eqvкотk r; fd;k tkuk gS mldk {ks=Qy vf/kd gS rFkk mi iaft;d ls tks lwpuk izkIr gqbZ gS os leLr NksVs NksVs VqdMs+ v?f"K dk;Z gsrq fo?; gq, gS ftudk ewY; vf/kd gksuk LokHkkfod gS vr% izLrkfor pd 6 bZ NksVh dh Hkwfe dk eqvкотk 9]500@&;s izfr ch?kk r; fd;k tkrk gS**

13. Necessary particulars of the land sold through the sale-deeds whose certified copies have been filed by the parties have been shown in a tabular form by the learned Civil Judge in each judgment. The relevant portions of his judgment given in case relating to appeal No. 17/81 run as under:

^^vc bu nLrkfotha lk{; ij fopkj fd;k tkrk gS A izkFkhZ dh rjQ ls izLrqr cS;ukeksa dh fuEukafdr pkVZ esa n[kyk;k x;k gS %&

izn"KZ vksj fnukad jdck xzke@pd dgydher nj izfr ch?kk

iz- 2@3&1&74 2 ch?kk 3 bZ NksVh 3 fcLok 40]000@& 18]370&yxHkx

iz- 3@3&2&73 4 fc?kk 6 bZ NksVh 48]000@& 12]000@&

iz- 4@17&4&73 12 fc?kk 12 fcLok

3 bZ NksVh 1]46]000@& 9]360@&yxHkx

iz- 5@10&10&73 9 fcLok 6 bZ NksVh 6]000@& 13]333@&yxHkx

iz- 6@3&1&74 10 fcLok 2 bZ NksVh 12]000@& 24]000@&

vizkFkhZ dh rjQ ls izLrqr cs;ukeksa dh fuEu pkVZ esa fn[kyk;k x;k gS %&

iz- ,- 1@22&2&74 4 fc?kk 6 bZ NksVh 20]000@& 4]000@&

19 fcLok

iz- ,- 2@3&1&74 5 fcLok 3 bZ NksVh 1]375@& 5]330@&

iz- ,- 3@21&1&74 10 fcLok 5 bZ NksVh 2]500@& 5]000@&

14. It is correct that the sale-deed referred to in the order of the Land Acquisition Officer, Sri Ganganagar dated April 27, 1979 and also in the judgments of the learned Civil Judge, Sri Ganganagar mostly relate to the small pieces of land, In Kausalya Devi v. Land Acquisition Officer Aurangabad AIR 1984 SC 982 at p. 989, para 13, it has been observed as under: --

"Two principles relating to the matter of "fixation of compensation relevant for the present purpose may be kept in view. When large tracts are acquired, the transaction in respect of small properties do not offer a proper guideline. Therefore, the valuation in transactions in regard to smaller property is not taken as a real basis for determining the compensation for larger tracts of property (See Prithvi Raj Taneja (Dead) by Lrs. Vs. The State of Madhya Pradesh and Another, ; Padma Uppal and Others Vs. State of Punjab and Others, In certain other cases this court indicated that for determining the market value of a large property on the basis of a sale transaction for smaller property a deduction should be given. In The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty, a reduction of 25% was indicated while there are certain other cases where the view is that the reduction should be to the extent of 1/3."

The learned Civil Judge has solely based his said estimates on the sale-deed dated April 17, 1973 relating to the sale of 15 bigha and 12 biswas of land situated in chak 3e for Rs. 1,46,000/- and then order of the Land Acquisition Officer dated April 27, 1979 awarding compensation @ Rs. 9,500/- per bigha. He has not taken into consideration the potential value of the land. It has been observed by the Land Acquisition Officer in his order that according to the information furnished by the Sub-Registrar, Sri Ganganagar, the average price comes to Rs. 12,000/- per bigha and it appears to be very expensive. He has not given any reason for holding it so. The information furnished by the Sub-Registrar, Sri Ganganagar is based on the sale-deeds whose particulars have duly been furnished. They are mentioned in his order. Relevant portion has been quoted in para No. 12.

15. Neither the Land Acquisition Officer nor the learned Civil Judge has given any reason for taking into consideration the sale fetching minimum price for basing their estimate of the market value. It has been observed in Sri Rani M. Vijayalakshamma Rao Bahadur. Ranees of Vuyyur v. The Collector of Madras 1968 (2) SCJ 869 as under : --

"It seems to us that there is substance in the first contention of Mr. Ram Reddy. After all when the land is being compulsorily taken away from a person, he is entitled to say that he should be given the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. It is not disputed that the transaction represented by Exhibit Rule 19 was a few months prior to the notification u/s 4 that it was a bona fide transaction and that it was entered into between a willing purchaser and willing seller. The land comprised in the sale deed is 11 grounds and was sold at Rs. 1,961 -per ground.

The land covered by exhibit Rule -27 was also sold before the notification but after the land comprised in Exhibit Rule 19 was sold. It is, true that this land was sold at Rs. 1.096 -per ground. This, however, is apparently because of two circumstances. One is that betterment levy at Rs. 500 - per ground had to be paid by the vendee and the other that the land comprised in it is very much more extensive, that is about 93 grounds or so. Whatever that may be. it seems to us to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to rest unless there are strong circumstances justifying a different course. In any case we see no reason why an average of two sale-deeds should have been taken in this case."

16. It has been observed in *The State of Madras Vs. A.M. Nanjan and Another*, as follows: --

"We are unable to accept the submission that the awards in question cannot be taken as safe-guide in the matter of determination of compensation. As a matter of fact these awards given by the Collector are at least relevant material and may be in the nature of admission with regard to the value of the land on behalf of the State and if the land involved in the awards is comparable land in the reasonable proximity of the acquired land, the rates found in the said documents would be a reliable material to afford a basis to work upon for determination of the compensation on a later date. The awards, therefore, cannot be dismissed as inadmissible for the purpose of determination of the compensation."

17. It is clear from the charge (chart) given in para No. 12, that the highest rate fetched was Rs. 20,000 - per bigha. Applying the deduction as laid down by Hon"ble Supreme Court, the highest price comes to Rs. 13,334 - (Rs. 20,000 - Rs. 6,666 -). In view of these facts, circumstances and authoritative observations, it can well be said that the learned Civil Judge committed an error in awarding compensation @ Rs. 9,500 - per bigha. He should have awarded compensation at the rate of Rs. 12,000 - per bigha. At this rate, the claimant Girdhar Ram has claimed compensation in his appeal No. 36 of 1981.

18. The next question for consideration is whether the learned civil Judge should not have awarded solatium @ 10% as provided u/s 23(2) of the Rajasthan Act. It was contended by the learned counsel for the appellants that the lands were acquired for the purpose of Urban Improvement Trust. Ganganagar and as such the proviso given below Sub-Section (2) of Section 23 of the Rajasthan Act was applicable. There is no force in this contention for more than one reasons. Firstly the Land Acquisition Officer. Sri Ganganagar himself awarded solatium @ 10% and the reference filed by the Urban Improvement Trust. Sri Ganganagar was rejected. Secondly, provisions similar to the proviso debarring solatium in cases of acquisition for the purpose of improvement and development of Trust have been held to be ultra vires of the constitution in *Balammal and Others Vs. State of Madras and Others*, runs as under: --

"But, in our judgment, counsel for the owners are right in contending that Sub-Clause (2) of Clause 6 of the Schedule to Act 37 of 1950, insofar as it deprived the owners of the lands of the statutory addition to the market value of the lands under Sec. 23(2) of the Land Acquisition Act is violative of the equality Clause of the constitution, and is on that account void. If the State had acquired the lands for improvement of the town under the Land Acquisition Act, the acquiring authority was bound to award in addition to the market value 15 percent solatium u/s 23 (2) of the Land Acquisition Act. But by acquiring the lands under the Land Acquisition Act as modified by the Schedule to the Madras City Improvement Trust Act 37 of 1950 for the Improvement Trust which also is a public purpose, the owners are, it is claimed, deprived of the right to the statutory addition. An owner of land is ordinarily entitled to receive the solatium in addition to the market value, for compulsory acquisition of his land, if it is acquired under the Land Acquisition Act, but not if it is acquired under the Madras City Improvement Trust Act. A clear case of discrimination which infringes the guarantee of equal protection of the law arises and the provision which is more prejudicial to the owners of the lands which are compulsorily acquired just on the decisions of this court, be deemed invalid."

19. There is a great force in the contention of the learned counsel for the claimant Girdhari Ram (appellant) in appeal No. 36/81) that the learned Civil Judge seriously erred in not awarding solatium on the ground that he is still in possession of the disputed land. It provisions of Section 23 that the grant of solatium is independent of the delivery of possession. It is case of the State of Rajasthan is and Urban Improvement Trust (now Municipal Council), Sri Ganganagar that the possession of the land belonging to claimant Girdhari Ram had already been taken and it has vested in the Government. The learned Civil Judge should have granted solatium to the claimant Girdhari Ram also! @ 10%.

20. It was lastly contended by the learned counsel for the Municipal Council and by Deputy Government Advocate, that Section 28, Rajasthan Act permitted grant of interest @ 4% per annum from the date of taking of the possession of the land but the learned Civil Judge has granted interest @ 6%. As already observed above, Rajasthan Act stood repealed with effect from September 24, 1984, the day on which the Land Acquisition; (Amendment) Act, 1984 came into force. According to the decision of the Supreme Court given in Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., the provisions of Section 30 of this Act would not be applicable to the present awards. After the repeal of the Rajasthan Act, the provisions of the Land Acquisition Act, 1894 would be applicable This court is bound to take note of the change in law. Before the amendment of the Central Act by Land Acquisition (Amendment) Act, 1984, Section 28 provided interest @ 6%- As such the reduction of interest from 6% to 4% is not permissible.

21. It is correct that Section 28 of the Rajasthan Act and also of Central Act speak of payment of interest from the date of taking of possession of the land. It

is the admitted case in the reply, paper No. 26/7, 8 & 9, of the Municipal Council, Sri Ganganagat that possession of the land was duly taken from the claimant Girdhari Ram on May 2, 1974. It is also stated in the reply that the claimant was permitted to cultivate the land for two months only. As such the learned Civil Judge committed an error in not allowing interest to the claimant Girdhari Ram.

22. Consequently, appeals Nos. 17, 18, 19, 20 and 21 of 1981 are dismissed with costs.

23. Appeal No. 36 of 1981 is allowed with costs. The appellant Girdhari Ram will get compensation at the note of Rs. 12,000. -per bigha, solatium at the rate of 10% and interest @ 6% per annum. To this extent, the award of the learned Civil Judge, Sri Ganganagar given in his case No. 1 78 is modified.