

(2010) 08 AHC CK 0380

Allahabad High Court

Case No: None

Collector

APPELLANT

Vs

Shiv Narain

RESPONDENT

Date of Decision: Aug. 13, 2010**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 22, Order 41 Rule 33
- Land Acquisition Act, 1894 - Section 18, 4, 54
- Limitation Act, 1963 - Section 5

Citation: (2010) 6 AWC 6215**Hon'ble Judges:** Pankaj Mithal, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

Pankaj Mithal, J.

The Collector, Varanasi has preferred this appeal u/s 54 of the Land Acquisition Act against the judgment, order and award dated 23.1.1991 passed by the I Additional District Judge in LAR No. 199 of 1989 Sheo Narain and Ors. v. Collector, Varanasi.

2. The land was acquired by the State of U.P., for the construction of a Canal. The Notification u/s 4 of the Act was issued on 10.11.1987. The Special Land Acquisition Officer (in short SLAO) offered market value vide award dated 15.10.1988. The claimant/respondents not satisfied by the market value so offered preferred a reference u/s 18 of the Act. The reference court by the impugned judgment, order and award has increased the market value to Rs. 7,500/- per biswa and has awarded compensation accordingly.

3. The submission of the Learned Standing Counsel appearing for the appellant is that the compensation so awarded is highly excessive and the market value of the land at the time of acquisition was much lower.

4. I have gone through the judgment and order of the reference court. I find that the reference court has awarded compensation at the above market value on the basis of the judgment and order passed in earlier reference No. 412 of 1987 Zahid Hasan v. Collector, Varanasi which was decided by the X Additional District Judge on 10.1.1989. In the said reference for the land of the same village and acquired by the same notification compensation @ Rs. 7,500/- per biswa was awarded. On enquiry being made from the office it was revealed that against the aforesaid judgment and order First Appeal No. (637) of 1989 State v. Zahid Hasan was preferred which was dismissed on 16.10.1989. Thus, the award of compensation @ Rs. 7,500/- in the above case has become final and conclusive.

5. In K. Periasami v. Sub-Tehsildar (Land Acquisition) 1994 LACC 606 (SC) it has held where large area of land is acquired by the same notification it is not proper for different benches of the High Court to award different market rate. It is always proper to award same market value on parity basis.

6. In view of the aforesaid facts and circumstances, there is no illegality in the judgment, order and award of the reference court. The claimant respondents are also held to be entitled to the same rate of compensation.

7. Learned Counsel for the claimant respondents submitted that he has filed cross objections in the present appeal against the impugned judgment and order of the reference court claiming enhancement in compensation.

8. The enhancement so claimed by the claimant-respondents by way of cross objections has been opposed by the Learned Standing Counsel on the ground that if the claimant-respondents were not satisfied by the award of the reference court he ought to have preferred a separate appeal. The enhancement can not be granted in the cross objections.

9. It is true that ordinarily the claimant-respondents if aggrieved by the award of the reference court ought to have preferred a separate appeal. However, to mitigate the hardship and to avoid multifarious litigation for the same cause of action a provision for cross objection has been made under Order XLI Rule 22 read with Rule 33 CPC. The aforesaid Rule 22 of Order XLI provides that the respondent to an appeal may not only support the decree but may take objection against the finding recorded against him by the courts below and to the decree which he could have taken by way of separate appeal provided he has filed cross objections in the appellate court within the time provided.

10. Similarly, the appellate court under Rule 33 of Order XLI has been empowered to pass a decree of the nature which ought to have been passed on an appeal of the respondent irrespective of the fact respondents have not filed any appeal against the decree passed in the suit.

11. Apart from the above two provisions there is amendment in C.P.C., to its applicability in U.P., by adding Order XLI "A". Rule 10 of Order XLI A CPC as applicable to U.P., provides that the respondent to an appeal may not only support decree of the court below but may take cross objections to the decree as he could have otherwise taken by way of an appeal provided he has filed cross objections within the time provided.

12. A combined reading of the aforesaid provisions demonstrates that a party to proceeding instead of filing an appeal may file cross objections in an appeal preferred by another party to the proceeding and such cross objections would be decided, as if he had preferred a separate appeal.

13. In the case of [U.P. State Road Transport Corporation Vs. Smt. Janki Devi and Others](#), in a matter of appeal arising from the award of the Motor Accident Claims Tribunal the Full Bench of this Court not only held that the cross objections to be maintainable but further laid down that a right to take cross objections in an appeal is nothing but the exercise of the right of appeal which has been given to the aggrieved party and there is no material difference between an appeal and cross objection.

14. In view of the aforesaid provisions I am of the opinion that the claimant-respondents can maintain cross objections in an appeal filed by the State for reducing compensation awarded, for enhancing the market value as if it is a separate appeal so long as the claimant-respondents are party to the original proceedings having a right to appeal and has filed cross objections as prescribed.

15. Learned Counsel for the claimant-respondents on the basis of the cross objections has urged that in one of the Land Acquisition References 183 of 1989 in respect of the land covered by the same notification compensation @ Rs. 20,000/- per biswa has been awarded. Therefore, the claimant respondents are also entitle for similar enhancement.

16. The argument though appealing but on a closure scrutiny can not be accepted.

17. Admittedly, under the notification for acquisition a very huge area of land was acquired of several villages. The land involved in the above-referred LAR No. 183 of 1989 is of a different village. The land of the said village can not be equated with the land of the claimant-respondents. In the present case there is no iota of evidence on record in any form to establish the comparability of the land of the two villages and that the land of the claimant-respondents are similarly and identically situated having the same advantages and potentiality possessed by the land in respect of which compensation @ Rs. 20,000/- per biswa has been awarded.

18. Reliance placed by the Learned Counsel for the claimant-respondents on a decision of the Supreme Court in the case of Nand Ram and Ors. v. State of Haryana 1989 ALL ILAC (3) 1 is not applicable and is distinguishable. In the said case State

was directed to pay similar compensation to the land owners whose lands were similarly situated and were acquired by the same notification.

19. In the present case, no doubt both the lands have been acquired by the same notification but they are of different villages and in the absence of any evidence to show that they are similarly situated, they can not be equated and awarded compensation at the same rate. On the other hand, Supreme Court in the case of *Jai Prakash and Ors. v. Union of India* JT 1997 (4) SC 12 ruled that merely for the reason that higher compensation has been given for lands of neighbouring villages, it does not entitle the claimant-respondents whose land belonged to another village to get the same compensation.

20. In view of the above, I am not inclined to accept the contention of the claimant-respondents for any enhancement in compensation. Accordingly, the cross objections have no force.

21. At this stage, I notice that the cross-objections are reported to be beyond time by 13 years and 39 days and for condoning the said delay an application u/s 5 of the Limitation Act has also been moved. I have gone through the above application and the affidavit filed in its support. I am not satisfied by the explanation furnished for such a long delay. In fact there is no explanation and I decline to condone the delay in filing the cross objections.

22. In the totality of the facts and circumstances and discussions above, the award of compensation as made by the reference court @ Rs. 7,500/- per biswa is upheld. Both the appeals of the State for reduction of the market value and the cross objections of the claimant-respondents for enhancement are dismissed.

23. Parties to bear their own costs.