

Bharat Singh v. State of Haryana (R. N. Mittal, J.)

Revenue itself does not consider the findings of the Tribunal as sacrosanct although the findings may be binding on the Income-tax Officers. But the Revenue has vehemently opposed the application for quashing the complaint before the Magistrate.

(5) No other point is urged.

(6) For the reasons recorded above, this petition fails and is dismissed and the parties are directed to appear before the Magistrate on 19th June, 1978, who will proceed with the case in accordance with law.

H.S.B.

Before R. N. Mittal, J.

BHARAT SINGH—Appellant.

versus

STATE OF HARYANA—Respondent.

Regular First Appeal No. 137 of 1971

June 1, 1978

Indian Evidence Act (1 of 1872)—Sections 35, 65 and 91—Mutations—Whether admissible in evidence to prove price of land.

Held, that mutations are admissible in evidence for determining the price of land.

(Para 4)

Regular First Appeal from the order of the Court of Shri S. R. Seth, Additional District Judge, Rohtak, dated 10th November, 1970 allowing each of the claimant compensation for the land at the rate of Rs 5.50 Nps. per sq. yard less than the amount already received. According to the provisions of Section 28 of the Land Acquisition Act, 15 per cent would be added to the balance in case of each claimant. In each case on the balance interest at the rate of 6 per cent per annum is also allowed from the date of possession upto the date of order. In case of default each claimant would get interest at the rate of 6 per cent per annum from the date of order upto the date of realisation.

S. C. Kapur, Advocate, for the appellant.

S. C. Mohanta, A. G., Haryana with N. K. Kapur, Advocate, for the respondent.

JUDGMENT

Rajendra Nath Mittal, J.—(1) This judgment will dispose of R.F.A. Nos. 137 to 142 and 147 to 153 of 1971, which arise out of the same judgment of the Additional District Judge, Rohtak, dated November 10, 1970.

(2) Briefly the facts of the case are that a notification dated January 2, 1969 under section 4 of the Land Acquisition Act (hereinafter referred to as the Act) was issued regarding the land in dispute belonging to several owners. The land was needed for construction of District Jail, Rohtak. The Collector determined compensation of the land at the rate of Rs. 8,000 per acre for *Barani* land, Rs. 8,800 for *Nehri* land and Rs. 6,000 for *Ghair Mumkan* land. The owners filed objections against the award under section 18 of the Act and prayed that the matter may be referred to the Civil Court for determination of the price. On the applications of the landowners 7 references were made to the Additional District Judge, Rohtak which were numbered as Claim. File Nos. 34/4 to 40/4. These were consolidated and disposed of by one judgment. The learned Additional District Judge enhanced the compensation for all types of land at the rate of Rs. 5.50 per square yard. Thirteen appeals have been filed against the judgment of the learned Additional District Judge, six by the land owners and seven by the State of Haryana. The former have been numbered as RFAs 137 to 142 and the latter as RFAs' 147 to 153, of 1971.

(3) It is contended by Mr Kapoor, learned counsel for the landowners, that the mutations are not admissible into evidence for proving the price of the land as these constitute secondary evidence of the sale deeds. According to him, only duly proved sale deeds, or if case for secondary evidence is made out, duly certified copies of sale deeds from the registration department, can be taken into consideration. He in support of his contention has made a reference to sections 91 and 65 of the Evidence Act, and to two cases namely, *Nani Bai v. Gija Bai* (1), and *Parsa Singh v. Shmz. Parkash Kaur and others* (2).

(1) A.I.R. 1958 S.C. 706.

(2) 1976 P.L.R. 21.

(4) I have given a thoughtful consideration to the argument of the learned counsel but regret my inability to accept it. Mutations are prepared by public servants in discharge of official duties, as they are enjoined to do so under section 34 of the Punjab Land Revenue Act. The entries in the mutations are later on incorporated in the Jamabandis to which presumption of truth is attached under section 44 of the Punjab Land Revenue Act. Section 35 of the Evidence Act says that an entry in any public or other official book, register, or record, stating a fact in issue or relevant fact, and made by a public servant in discharge of his official duty, is itself a relevant fact. It is well settled principle of law that mutations can be tendered into evidence and it is not necessary to prove them. Section 91 of the Evidence Act provides that when the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of document, and in all cases in which any matter is required by law to be reduced to the form of document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, on secondary evidence of its contents in cases in which secondary evidence is admissible under its provisions. Section 65 of the Evidence Act deals with cases in which secondary evidence relating to documents may be given. It is the established canon of interpretation of statute that a general provision must yield to special provision provided for particular cases. Sections 91 and 65 of the Evidence Act are general provisions whereas section 34 of the Punjab Land Revenue Act is a special provision. Therefore in case of conflict the provisions of section 34 of the Punjab Land Revenue Act read with section 35 of the Evidence Act, must prevail.

(5) For the aforesaid reasons, I am of the view that the mutations are admissible for determining the price of land. The cases cited by the learned counsel are distinguishable, and he cannot derive any benefit from the observations made therein.

(6) The next question that arises for determination is whether the price of the land has been determined correctly by the Additional District Judge, Rohtak. The parties produced documentary as well as oral evidence to prove the market value of the land. The land owners placed reliance on the sale deeds Exhibits, PW1/1 dated October 20, 1967, PW5/1 dated October 30, 1968, PW6/1 dated March 18, 1959, PW9/1 dated December 9, 1968, PW9/2 dated July 8, 1968,

PW9/3 dated May 28, 1963, PW9/4 dated April 10, 1960, PW9/5 dated April 10, 1960, PW9/6 dated April 5, 1960 and PW9/7 dated September 17, 1968. The respondents relied on mutations Exhibits R. 1 dated August 1, 1964, R 2 dated April 27, 1964, R 3 dated October 29, 1966, R. 4 dated May 9, 1967, R. 5 dated March 13, 1967, R 6 dated May 30, 1968 and R 7 dated December 13, 1968.

(7) Before dealing with the sales mentioned in the sale deeds and the mutations, it will be advantageous to advert to a few admitted facts. The acquired land is situated on the Northern bypass road within the municipal limits of Rohtak and is surrounded by various colonies namely, Kailash Colony, Rama Colony, Durga Colony and Laxmi Nagar. The colonies are situated at distances varying from 100 to 500 yards. Before acquisition the land was being used for agricultural purposes. In view of the above circumstances, it is evident that the land has potential value. It is a settled proposition of law that when price of land is to be determined its potential value has to be taken into consideration.

(8) In determining the value of the land especially in urban areas its situation is an important factor. The location of land sold through sale deeds Exhibits PW 9/4, PW9/5, PW9/7 and mutations Exhibits R. 1 to R. 7 is not known. It may be possible that the properties mentioned in the aforesaid documents may not be similarly situated as the property acquired. Thus the counsel for the parties cannot take any benefit from the aforesaid sales.

(9) The land covered by sale deeds exhibits PW 1/1 and PW 5/1 is situated on Sonapat road which is more important road as compared to Northern bypass road. Some of the colonies mentioned above are also situated on that road. The land situated on main road necessarily carry more values than that which is located on an unimportant bypass. In this situation, the price of the land in these sale deeds is also of no help. Sale deed Exhibit PW 6/1 relates to the year 1959. In land acquisition cases, the price of the land which is sold near the date of acquisition is normally taken into consideration. The sales which took place much before the acquisition are of no help for working out the price. As the sale deed Exhibit PW 6/1 relates to the year 1959 and the notification under section 4 of the Land Acquisition Act was published in January, 1969, therefore, the price in the said sale deed cannot be taken into consideration.

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(10) Now I am left with sale deeds Exhibits PW 9/1, PW 9/2, PW9/3 and PW9/6. The sale price of the land per square yard according to the above sale deeds is as follows:—

Serial No.	Exhibit of the sale deed	Date	Rate per square yard
1.	PW9/1	9-12-1968	Rs. 11.75
2.	PW9/2	8-7-1968	Rs. 9.05
3.	PW9/4	28-5-1963	Rs. 7.30
4.	PW9/6	5-4-1968	Rs. 3.00

The average price of these transactions comes to Rs. 7.80 paise per square yard. The properties, subject matter of the sale deeds, are situated in the colonies around the property in dispute. These sales are of small pieces of land and the area varies from 200 square yards to 627 square yards. From the area and situation of these plots, it is apparent that the same were purchased for construction of residential houses. As these sales are of small pieces of land situated in colonies, their prices should normally be not taken into consideration for determining the price of big pieces of land. There is however no alternative but to determine the price of the land acquired on the basis of these sales.

(11) I have already mentioned above that the land in dispute was being used for agricultural purposes. For developing agricultural land into a residential colony, some land is to be left for common purposes such as roads, schools, parks, etc. Normally, 2/3rd land is utilized for carving out plots and 1/3rd land is left for common purposes. If the price of the land is reduced by 1/3rd, the average price per square yard comes to Rs. 5.20 paise. There has been upward trend of prices from 1963 to 1968. The learned Additional District Judge has fixed the price of the land at the rate of Rs. 5.50 paise per square yard. In my view the valuation found by him is correct. In reaching that conclusion, he took into consideration the average price of all the sales brought on record, without taking into consideration where the properties were situated. The main attack of the learned counsel for the parties was on the method adopted by the learned Additional District Judge for determining the price. I am of the opinion that the method adopted by the learned Additional

District Judge was not correct but his conclusion was correct. I, therefore, affirm the price fixed by him.

(12) For the reasons recorded above, the appeals fail and the same are dismissed with no order as to costs.

H.S.B.

FULL BENCH

Before S. S. Sandhawalia, P. C. Jain and S. C. Mital, JJ.

S. K. VERMA and OTHERS—Petitioners

versus

STATE OF PUNJAB, ETC.—Respondents.

Civil Writ Petition No. 1050 of 1978.

May 19, 1978.

Constitution of India 1950—Articles 16 and 311—Services of an ad hoc public servant—Whether can be terminated to employ another ad hoc employee when post not abolished—Such termination—Whether violates Articles 16 or 311—Considerations as to who replaces the ad hoc employee and the nature of his tenure—Whether relevant—Ad hoc and temporary employee—Distinction.

Held, that the term 'ad hoc employee' is conveniently used for a wholly temporary employee engaged either for a particular period or for a particular purpose and one whose services can be terminated with the maximum of ease. Having regard to the ordinary meaning of the term, no distinction can reasonably be drawn betwixt a temporary employee whose services are terminable without notice or otherwise and an employee characterised as *ad hoc* and employed on similar terms. Indeed, in the gamut of service law an *ad hoc* employee virtually stands at the lowest rung. As against the permanent, quasi-permanent, and temporary employee, the *ad hoc* one appears at the lowest level implying that he has been engaged casually, or for a stop-gap arrangement for a short duration or fleeting purposes.
(Paras 8 and 9).

Held, that the issue of termination of the services of an *ad hoc* employee is strictly confined betwixt him and the State. The list is confined to these two parties. The consideration whether consequent upon such a termination the State would choose to employ any one at all in the same post, and if so, whether such an employment would