

[2022 LiveLaw \(SC\) 268](#)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

M.R. SHAH; B.V. NAGARATHNA, JJ.

CIVIL APPEAL NO. 1760 OF 2022; MARCH 10, 2022

Sanjay Kumar Singh Versus The State of Jharkhand

Code of Civil Procedure, 1908 : Order 41 Rule 27 - The appellate court to take additional evidence in exceptional circumstances - Where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed - The admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause - The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. (Para 4)

Land Acquisition Act, 1894 - Awarding of fair compensation to the landowner whose land has been acquired for public purpose - The claimant whose land is acquired is entitled to the fair market value of his land. (Para 3.1)

Summary: High Court dismissed an application for additional evidence filed by the appellant to bring on record certain sale deeds and certified copy of the judgments and awards passed in other land acquisition cases, which he contended, were relevant for the purpose of determining the fair market value - Allowed - It was a case of awarding of fair compensation to the land owner whose land has been acquired for public purpose - There was no other material available on record to arrive at a fair market value of the acquired land. Therefore, in the facts and circumstances of the case, the High Court ought to have allowed the application for additional evidence.

For Appellant(s) Mr. Gaurav Agrawal, AOR

For Respondent(s) Mr. Tapesh Kumar Singh, AOR

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 28.03.2019 passed by the High Court of Jharkhand at Ranchi in First Appeal No.

44/2007, by which the High Court has dismissed the said First Appeal preferred by the appellant herein – original claimant, the original claimant has preferred the present appeal.

2. Notification under Section 4 of the Land Acquisition Act, 1894 (for short, '1894 Act') was issued proposing to acquire the land of the original land owner vide notification dated 01.10.1980 for public purpose. The Land Acquisition Officer awarded a total compensation of Rs.92,121/- for the entire acquired land. A reference under Section 18 of the 1894 Act at the instance of the land owner being Reference Case No. 36/1989 came to be rejected.

2.1 Feeling aggrieved and dissatisfied with the judgment and award passed by the Reference Court in Reference Case No. 36/1989 refusing to enhance the amount of compensation, the appellant herein – original claimant – land owner preferred an appeal before the High Court being First Appeal No. 44/2007. Before the High Court, the appellant herein filed an application for additional evidence under Order 41 Rule 27 of the Code of Civil Procedure (for short, 'CPC') and proposed to bring on record certain sale deeds and the certified copy of the judgment and award dated 23.08.2006 and 21.09.2006 passed in Land Acquisition Case Nos. 12/1989; 27/1989; 32/1989 and 52/1989, which, according to the appellant, were relevant for the purpose of determining the fair market value. The said application under Order 41 Rule 27 CPC being IA No. 1384/2019 has been dismissed by the High Court while deciding the appeal, by the impugned judgment and order after rejecting IA No. 2 1384/2019, thus by the impugned judgment and order, the High Court has dismissed the First Appeal.

2.2 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court dismissing the First Appeal as well as rejecting IA No. 1384/2019, the appellant herein – original claimant has preferred the present appeal.

3. We have heard the learned counsel for the respective parties at length.

3.1 At the outset, it is required to be noted that before the Reference Court as well as before the High Court, the only evidence produced on record was the sale deed dated 29.12.1987 which was rejected from being considered. Hence, as such, there was no other evidence/material on record to arrive at a fair market value for the acquired land. Therefore, before the High Court, the appellant filed an application under Order 41 Rule 27 CPC for additional evidence to bring on record the sale deeds and certified copy of the judgment and award passed by the Reference Court which, according to the appellant, would have a direct bearing on the determination of the fair market value of the acquired land. The High Court has rejected the said application by observing that the application does not satisfy the requirement of Order 41 Rule 27 read with Section 96 of the CPC. The High Court has also observed that the appellant has failed to establish that notwithstanding exercise of due diligence, such additional evidence was not within his knowledge and could not after exercise of due diligence

be produced before the courts below. However, the High Court while considering the application for additional evidence has not appreciated the fact that the documents which were sought to be produced as additional evidence might have a bearing on determination of the fair market value of the acquired land. It is to be noted that except the sale deed dated 29.12.1987, which was rejected by the courts below, no further evidence was on record to determine the fair market value of the acquired land. It was a case of awarding of fair compensation to the land owner whose land has been acquired for public purpose. It cannot be disputed that the claimant whose land is acquired is entitled to the fair market value of his land.

4. It is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of the circumstances in which the production of additional evidence under Order 41 Rule 27 CPC by the appellate court is to be considered is, whether or not the appellate court requires the additional evidence so as to enable it to pronouncement judgment or for any other substantial cause of like nature. As observed and held by this Court in the case of **A. Andisamy Chettiar v. A. Subburaj Chettiar, reported in (2015) 17 SCC 713**, the admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. It is further observed that the true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.

5. Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, we are of the opinion that while considering the application for additional evidence, the High Court has not at all adverted to the aforesaid relevant consideration, i.e., whether the additional evidence sought to be adduced would have a direct bearing on pronouncing the judgment or for any other substantial cause. As observed hereinabove, except sale deed 29.12.1987, which as such was rejected, there was no other material available on record to arrive at a fair market value of the acquired land. Therefore, in the facts and circumstances of the case, the High Court

ought to have allowed the application for additional evidence. However, at the same time, even after permitting to adduce the additional evidence, the applicant has to prove the existence, authenticity and genuineness of the documents including contents thereof, in accordance with law and for the aforesaid purpose, the matter is to be remanded to the Reference Court.

6. In view of the above discussion and for the reasons stated above, the present appeal is partly allowed. Order passed by the High Court rejecting IA No. 1384/2019 for adducing additional evidence to bring on record the documents mentioned in the said application is hereby quashed and set aside. IA No. 1384/2019 filed before the High Court for adducing additional evidence under Order 41 Rule 27 CPC is hereby allowed. The appellant herein is permitted to bring on record the documents mentioned in IA No. 1384/2019 as additional evidence. However, as observed and held by this Court in the case of ***Uttaradi Mutt v. Raghavendra Swamy Mutt, (2018) 10 SCC 484***, allowing the application filed under Order 41 Rule 27 CPC does not lead to the result that the additional documents/additional evidence can be straightway exhibited rather, the applicant would have to not only prove the existence, authenticity and genuineness of the said documents but also the contents thereof, in accordance with law. It is observed that thus the documents which are permitted to be brought on record as additional evidence have to be proved by the appellant before the Reference Court, in accordance with law and only thereafter and after proving the existence, authenticity and genuineness of the said documents including contents thereof, the same can be taken into consideration by the Reference Court.

For the aforesaid purpose, the matter is remanded to the Reference Court. Land Acquisition Case No. 36/1989 is ordered to be restored on the file of the learned Reference Court – Subordinate Judgell, Daltonganj. Consequently, the impugned judgment and order passed by the High Court dismissing the appeal is also hereby quashed and set aside. However, it is observed and held that we have not expressed anything on merits of the documents permitted to be brought on record as additional evidence and it would be for the Reference Court to deal with the same in accordance with law and on its own merits and after the same are proved by the appellant, as observed hereinabove. The Reference Court is directed to decide the reference case No. 36/1989 afresh, in accordance with law.

7. The present appeal is partly allowed to the aforesaid extent. However, in the facts and circumstances of the case, there shall be no order as to costs.