

Cement Corporation Of India Ltd vs Purya & Ors on 7 October, 2004

Equivalent citations: AIR 2004 SUPREME COURT 4830, 2004 (8) SCC 270, 2004 AIR SCW 5534, 2004 AIR - KANT. H. C. R. 3036, 2004 (8) ACE 41, 2004 (8) SCALE 558, 2004 (4) LRI 431, (2005) 25 ALLINDCAS 129 (SC), 2004 (6) SLT 276, 2005 (25) ALLINDCAS 129, (2004) 8 JT 327 (SC), 2004 (9) SRJ 543, 2004 (8) JT 327, (2004) 4 ALLMR 1138 (SC), (2004) 2 CLR 688 (SC), 2005 (1) ALL CJ 440, (2004) ILR (KANT) (4) 5153, (2004) 7 SUPREME 711, (2004) 3 GUJ LR 1841, (2004) 2 GUJ LH 692, (2004) 3 GCD 1978 (GUJ), (2004) 4 LAB LN 564, (2004) 107 FJR 108, (2004) 103 FACLR 239, (2005) 1 LABLJ 592, (2004) 4 ALL WC 3725, (2004) 3 ANDHLD 119, (2004) 3 ICC 561, (2004) 3 KER LT 737, (2005) 2 LANDLR 199, (2005) 1 PAT LJR 168, (2004) 4 RECCIVR 506, (2005) 1 JLJR 25, (2005) 1 CIVLJ 868, (2004) 2 LACC 540, (2004) 4 ICC 594, (2004) 8 SCALE 558, (2004) 23 INDLD 1, (2004) 3 CIVLJ 167, (2004) 4 CURCC 172, (2005) 2 BOM CR 739

Bench: H.K.Sema, S.B.Sinha

CASE NO.:

Appeal (civil) 6986 of 1999

PETITIONER:

Cement Corporation of India Ltd.

RESPONDENT:

Purya & Ors.

DATE OF JUDGMENT: 07/10/2004

BENCH:

N.Santosh Hegde S.N.Variava B.P.Singh, H.K.Sema & S.B.Sinha

JUDGMENT:

J U D G M E N T With C.A. Nos. 9783-9784/2003 C.A. Nos. 9787-9791/2003 C.A. Nos. 9792-9798/2003 C.A. Nos. 9800-9801/2003 C.A. Nos. 9804-9805/2003 C.A. No. 9806-9807/2003 C.A. Nos. 9809-9810/2003 C.A. Nos. 9811-9812/2003 C.A. Nos. 9813-9814/2003 C.A. Nos. 9815-9816/2003 C.A. Nos. 9821-9822/2003 C.A. Nos. 9833-9834/2003 C.A. Nos. 9836-9837/2003 C.A. Nos. 9842-9843/2003 C.A. Nos. 9871-9872/2003 C.A. Nos. 9891-9893/2003 C.A. Nos. 9895-9896/2003 SANTOSH HEGDE, J.

Noticing a conflict between two 3-Judge Benches of this Court in the case of Special Deputy Collector & Anr. vs. Kurra Sambasiva Rao & Ors. (1997 (6) SCC 41) and Land Acquisition Officer & Mandal Revenue Officer vs. V.Narasaiah (2001 (3) SCC 530), another 3-Judge Bench of this Court on 31st of July, 2001 considered it appropriate to place C.A.No.6986/99 for consideration by a larger Bench. It is in this background, the above appeal and other connected appeals are now before us.

In Kurra Sambasiva Rao's case (supra), this Court held that by introducing Section 51A in the Land Acquisition Act, 1894 (hereinafter LA Act) the Legislature only facilitated the parties concerned to produce a certified copy of a sale transaction in evidence and nothing more. This is what the Court observed in the said case.

"Section 51-A only dispenses with the production of the original sale deed and directs to receive certified copy for the reason that parties to the sale transaction would be reluctant to part with the original sale deed since acquisition proceedings would take long time before award of the compensation attains finality and in the meanwhile the owner of the sale deed is precluded from using the same for other purposes vis-a-vis this land. The marking of the certified copy per se is not admissible in evidence unless it is duly proved and the witnesses, viz., the vendor or the vendee, are examined." (Emphasis supplied) According to the above judgment Section 51A only dispenses with the production of the original sale deed and permits the receiving of a certified copy of such document in evidence. It is further held that the marking of certified copy per se does not make the contents of such document admissible in evidence unless it is duly proved and witnessed, that is, by the examination of the vendor or the vendee.

In the subsequent case of V.Narasaiah (supra), though this Court did not notice earlier judgment in Kurra Sambasiva Rao's case noticing certain other judgments which took similar view disagreed with the said view and held that the object of the Act was not only to permit the production of certified copy of the sale transactions but was also to accept the same as evidence of the transactions. This is what the courts had to say in V.Narasaiah's case in regard to the insertion of Section 51A in the LA Act. "If the only purpose served by Section 51A is to enable the court to admit the copy of the document in evidence there was no need for a legislative exercise because even otherwise the certified copy of the document could have been admitted in evidence. Section 64 of the Evidence Act says that "documents must be proved by primary evidence except in the cases hereinafter mentioned". Section 65 mentions the cases in which secondary evidence can be given of the existence, condition or contents of a document. One of the cases included in the list is detailed in clause (f) of the section which reads thus :

"65 (f) When the original is a document of which a certified copy is permitted by this Act, or by any other law in force in India, to be given in evidence", Section 57 of the Registration Act, 1908 enables anyone to apply for a copy of the entries in Book No. 1

(the said Book is meant for keeping the register of the documents as well as non-testamentary documents relating to immovable property). When any person applies for a copy of it the same shall be given to him. Sub-section (5) of Section 57 of that Act says that:

"57.(5) All copies given under this section shall be signed and sealed by the registering officer and shall be admissible for the purpose of proving the contents of the original documents."

If the position regarding admissibility of the contents of a document which is a certified copy falling within the purview of Section 57(5) of the Registration Act was as adumbrated above, even before the introduction of Section 51A in the LA Act, could there be any legislative object in incorporating the said new provision through Act 68 of 1984? It must be remembered that the State has the burden to prove the market value of the lands acquired by it for which the State may have to depend upon the prices of lands similarly situated which were transacted or sold in the recent past, particularly those lands situated in the neighbouring areas. The practice had shown that for the State officials it was a burden to trace out the persons connected with such transactions mentioned in the sale deeds and then to examine them in court for the purpose of proving such transactions. It was in the wake of the aforesaid practical difficulties that the new Section 51A was introduced in the LA Act."

From the above, we notice that in the latter judgment of V.Narasaiah, this Court interpreted the scope of Section 51A to include the production of certified copy of sale transaction and to make the same admissible in evidence without having to examine the vendor or the vendee of the said document to prove the contents of the document.

In these appeals, Shri Sandeep Sethi, learned senior counsel appearing for the appellant in CA No.6986-87/99 contended that this Court in Kurra Sambasiva Rao's case did not notice the words "may be accepted as evidence" because of which it fell in error in construing the scope of the Section very narrowly. He submitted that in V.Narasaiah's case, this Court having noticed the said words in Section 51A, correctly came to the conclusion that the object of inserting Section 51A was to do away with the formality of examining oral evidence in support of the contents of the documents in question.

Interestingly, Shri G.V.Chandrashekhar, learned counsel appearing for the claimant-respondent in the said appeals supported the argument of Shri Sandeep Sethi and went one step further and contended that in view of the definition given to the word "conclusive proof" in Section 4 of the Evidence Act read with the beginning words of Section 79 of the Evidence Act which starts with the words "the court shall presume" the Land Acquisition Officer or the Court, as the case may be, will have to start with the presumption that the contents of the documents produced under Section 51A are proved and it must place reliance on the same on the basis that the said transaction is a bona fide transaction and the value stated therein reflected true value. He submitted that Section 51A by the use of the words "may be accepted as evidence" has mandated the authority empowered to fix the market value of the property to proceed with the conclusive presumption that the contents of the

documents establish that fact.

Shri V.K. Garg, learned counsel appearing for the State of Haryana in some of the connected appeals contended that in view of Sections 74, 76 and 77 of the Evidence Act a certified copy of private document also can be treated for evidentiary purpose as a public document. He submitted that the presumption can be drawn as to the correctness and the contents of the documents as contemplated by Section 79 of the Evidence Act. In support of his contention, he placed reliance on judgment of this Court in *Madamanchi Ramappa & Anr. vs. Muthaluru Bojjappa* AIR 1963 (Vol 50) SCC 1633.

The above three counsels thus contended that the judgment of this Court in *V. Narasaiah's* case lays down the correct law.

Dr. Aman Hingorani and Shri A.K. Matta, learned counsel appearing for the respective parties in the connected appeals submitted that the interpretation given by the three Judge Bench in the *V. Narasaiah's* case goes far beyond the object of introducing Section 51A which according to them only provides for acceptance of the certified copy in evidence as contemplated in Section 3 of the Evidence Act and nothing beyond that.

They also contended that the certified copy of the registered document does not become a public document under Section 74 of the Evidence Act nor would it be primary evidence as argued by the appellant under Section 62 of the Evidence Act. The learned counsel who opposed the view in *V. Narasaiah's* case also brought to our notice certain other judgments of this Court wherein this Court had taken a similar view as taken by the three Judge Bench in *Kurra Sambasiva Rao* (supra) . In fairness , we think it is necessary to refer to those judgments also. In *Inder Singh & Ors. vs. Union of India & Ors.* 1993 (3) SCC 240 two Judge Bench of this Court speaking through K. Ramaswamy, J. held :-

" Under Section 51A of the Act as amended in 1984 the certified copies have been permitted to be brought on record as evidence of sale transaction recorded therein. The examination of the witnesses is to find that the sale transactions are bonafide and genuine transactions between willing vendor and willing vendee as reasonable prudent men and the price mentioned is not throw away price at arms length or depressed sales or brought into existence to inflate market value of the lands under acquisition and the sales are accommodating one will have to be established de-hors and the contents of the document by other evidence."

In *P. Ram Reddy & Ors. vs. Land Acquisition Officer, Hyderabad & Ors.* 1995 (2) SCC 305 two Judge Bench of this Court held :-

"Section 51A of the Land Acquisition Act, as seen therefrom, is enacted to enable the parties in land acquisition cases, to produce certified copies of documents to get over the difficulty of parties, in that, persons in possession of the original documents would not be ready to put them in courts.

However, the mere fact that a certified copy of the document is accepted as evidence of the transaction recorded in such document does not dispense with the need for a party relying upon the certified copies of such documents produced in court in examining witnesses connected with the documents to establish their genuineness and the truth of their contents. Therefore, the certified copies of registered documents, though accepted as evidence of transactions recorded in such documents, the court is not bound to act upon the contents of those documents unless persons connected with such documents give evidence in court as regards them and such evidence is accepted by the court as true."

In *Kummari Veeraiah & Ors. vs. State of A.P.* 1995 (4) SCC 136 another two Judge Bench of this Court held ;

"it is true that the certified copies of the sale deeds are admissible in evidence as secondary evidence under Section 51A of the Act since owners would be reluctant to part with their original sale deeds. But unless either the vendor or the vendee has been examined as witness to testify not only the consideration paid but also their specific knowledge and the circumstances in which the sale deed came to be executed, nearness to the lands, etc. the sale deeds cannot be relied on to determine market value of the acquired lands."

In *Indore Development Authority vs. Satyabhama Bai (SMT) & Ors.* 1996 (10) SCC 751, this Court following the earlier judgment of two Judge Bench in *P. Ram Reddy vs. Land Acquisition Officer, Hyderabad & Ors.* held :

" that filing of the certified copies of the sale deeds and marked thereof under Section 51-A is only to enable the claimants to dispense with the obligation to produce the original sale deed from the owners who are disinclined to part with their valuable title deed during long pendency of the proceeding. However, the claimants are enjoined to call as witnesses the vendor or vendee to prove the transactions as genuine in nature
"

In the case of *Meharban & Ors. vs. State of U.P. and Ors.* 1997 (6) SCC 54, a Bench of 3 Judges (which is not noticed by this Court in the case of *V. Narasaiah (supra)*) this Court held :-

"Since none connected with the sale deeds was examined, the sale deeds are inadmissible in evidence though certified copies marked under Section 51A are available. So, all the sale deeds stand excluded. It is the duty of the Court to take all the relevant factors into account before determination of the compensation In *A.P. State Road Transport Corporation, Hyderabad vs. P. Venkaiah & Ors.* (1997) 10 SCC 128, this Court held :

"Acceptance of certified copy of the sale deed under Section 51A relates only to the production of the original sale deeds but it does not dispense with proof of the

contents of the documents, relative features vis-à-vis Section 193 (sic), the land under acquisition. All is needed to be proved by examining the persons connected with the same and parties to the document."

From the above, it is seen that till the judgment of the three Judge Bench in V. Narasaiah's case (supra), the consensus of judicial opinion was that Section 51A was enacted for the limited purpose of enabling a party to produce certified copy of a registered sale transaction in evidence only and for proving the contents of the said document the parties had to lead oral evidence as contemplated in the Evidence Act.

A careful perusal of the judgment in Kurra Sambasiva Rao's case and other cases which fall in line with the said view discloses that they proceeded on the basis that prior to the insertion of Section 51A in the LA Act, the Evidence Act did not permit the production of a certified copy of the registered sale transaction in evidence. Therefore, by the insertion of Section 51A the legislature merely enabled a party to get over that problem. Thereafter, according to the said judgments, the party concerned had to prove the contents of the document by adducing oral evidence separately to prove the contents of the document.

The above view of the Court in Kurra Sambasiva Rao's case, in our opinion, is not the correct position in law. Even prior to the insertion of Section 51A of the Act the provisions of the Evidence Act and the Registration Act did permit the production of a certified copy in evidence. This has been clearly noticed in the judgment in Narasaiah's case wherein the court relying on Sections 64 and 65(f) of the Evidence Act read with Section 57(5) of the Registration Act held that production of a certified copy of a registered sale document in evidence was permissible in law even prior to insertion of Section 51A in the LA Act. We are in agreement with the said view expressed by this Court in Narasaiah's case.

In the above background the question for our consideration would be, what then is the real object of inserting 51A in LA Act ?

In the ordinary course a deed of sale is the evidence of a transaction by reason whereof for a consideration mentioned therein the title and interest in an immovable property specified therein is transferred by the vendor to the vendee. Genuineness of such transaction may be in question. In a given situation the quantum of consideration or the adequacy thereof may also fall for adjudication. The Courts, more often than not, are called upon to consider the nature of the transaction. Whenever a transaction evidenced by a sale deed is required to be brought on record, the execution thereof has to be proved in accordance with law. For proving such transaction, the original sale deed is required to be brought on record by way of primary evidence. Only when primary evidence is not available, a certified copy of the sale deed can be taken on record. Such certified copies evidencing any transaction are admissible in evidence, if the conditions precedent therefor in terms of Section 75 of the Indian Evidence Act are fulfilled. The transaction evidenced by the sale deed must be proved in accordance with law.

Evidences are of different types. It may be direct, indirect or real evidence. The existence of a given thing or fact is proved either by its actual production or by the testimony or admissible declaration of someone who has himself perceived it. Such evidence would be direct evidence. Presumptive evidence which is an indirect evidence would mean that when other facts are, thus, proved, the existence of the given fact may be logically inferred. Although the *factum probandum* and the *factum probantia* connote direct evidence, the former is superior in nature.

The terms 'primary and secondary evidence' apply to the kinds of proof that may be given to the contents of a document, irrespective of the purpose for which such contents, when proved, may be received. Primary evidence is an evidence which the law requires to be given first; secondary evidence is evidence which may be given in the absence of that better evidence when a proper explanation of its absence has been given. However, there are exceptions to the aforementioned rule.

Section 51A of the Land Acquisition Act seeks to make an exception to the aforementioned rule.

In the acquisition proceedings, sale deeds are required to be brought on records for the purpose of determining market value payable to the owner of the land when it is sought to be acquired.

Although by reason of the aforementioned provision the parties are free to produce original documents and prove the same in accordance with the terms of the rules of evidence as envisaged under the Indian Evidence Act, the L.A. Act provides for an alternative thereto by inserting the said provision in terms whereof the certified copies which are otherwise secondary evidence may be brought on record evidencing a transaction. Such transactions in terms of the aforementioned provision may be accepted in evidence. Acceptance of an evidence is not a term of art. It has an etymological meaning. It envisages exercise of judicial mind to the materials on record. Acceptance of evidence by a court would be dependent upon the facts of the case and other relevant factors. A piece of evidence in a given situation may be accepted by a court of law but in another it may not be.

Section 51 A of the L.A. Act may be read literally and having regard to the ordinary meaning which can be attributed to the term 'acceptance of evidence' relating to transaction evidenced by a sale deed, its admissibility in evidence would be beyond any question. We are not oblivious of the fact that only by bringing a documentary evidence in the record it is not automatically brought on the record. For bringing a documentary evidence on the record, the same must not only be admissible but the contents thereof must be proved in accordance with law. But when the statute enables a court to accept a sale deed on the records evidencing a transaction, nothing further is required to be done. The admissibility of a certified copy of sale deed by itself could not be held to be inadmissible as thereby a secondary evidence has been brought on record without proving the absence of primary evidence. Even the vendor or vendee thereof is not required to examine themselves for proving the contents thereof. This, however, would not mean that contents of the transaction as evidenced by the registered sale deed would automatically be accepted. The legislature advisedly has used the word 'may'. A discretion, therefore, has been conferred upon a court to be exercised judicially, i.e., upon taking into consideration the relevant factors.

In V.Narasaiah's case, this Court correctly understood the said scope and object of insertion of Section 51A in the LA Act when it held thus :

"It was in the wake of the aforesaid practical difficulties that the new Section 51A was introduced in the LA Act. When the section says that certified copy of a registered document "may be accepted as evidence of the transaction recorded in such document"

it enables the court to treat what is recorded in the document, in respect of the transactions referred to therein, as evidence."

While coming to the above conclusion in Narasaiah's case, this Court found support from similar provisions in the other statutes like Section 293 of the Code of Criminal Procedure which enables the court to use report of a Government Scientific Expert as evidence in any enquiry, trial or proceeding under the said Code, even without examining any person as a witness in a court for that purpose. Notice was also taken of Section 13(5) of the Prevention of Food Adulteration Act pertaining to the report of a Public Analyst which says that any document purporting to be a report signed by a Public Analyst may be used as evidence of the fact stated therein in any proceeding under the said Act. In Narasaiah's case, this Court also relied on a judgment of the Constitution Bench of this Court in Mangaldas Raghavji Ruparel & Anr. vs. State of Maharashtra & Anr. (AIR 1966 SC 128) which held thus:

"that sub-section clearly makes the contents of the report of Public Analyst admissible in evidence and the prosecution cannot fail solely on the ground that the Public Analyst had not been examined in the case, but what value is to be attached to such report must necessarily be for the court to consider and decide."

Thus, the reasoning of this Court in Narasaiah's case that Section 51A enables the party producing the certified copy of a sale transaction to rely on the contents of the document without having to examine the vendee or the vendor of that document is the correct position in law. This finding in Narasaiah's case is also supported by the decision of this Court in the case of Mangaldas Raghavji Ruparel (supra).

Therefore, we have no hesitation in accepting this view of the court in the Narasaiah's case as the correct view.

The submission of Mr. G. Chandrasekhar to the effect that the contents of a sale deed should be a conclusive proof as regard the transaction contained therein or the court must raise a mandatory presumption in relation thereto in terms of Section 51A of the Act cannot be accepted as the Court may or may not receive a certified copy of sale deed in evidence. It is discretionary in nature. Only because a document is admissible in evidence, as would appear from the discussions made hereinbefore, the same by itself would not mean that the contents thereof stand proved. Secondly, having regard to the other materials brought on record, the court may not accept the evidence contained in a deed of sale. When materials are brought on record by the parties to the lis, the court

is entitled to appreciate the evidence brought on records for determining the issues raised before it and in the said process, may accept one piece of evidence and reject the other.

In *M.S. Madhusoodhanan and Anr. vs. Kerala Kaumudi (P) Ltd. and Ors.* [(2004) 9 SCC 204], it is stated :

"119 They are rules of evidence which attempt to assist the judicial mind in the matter of weighing the probative or persuasive force of certain facts proved in relation to other facts presumed or inferred (ibid). Sometimes a discretion is left with the court either to raise a presumption or not as in Section 114 of the Evidence Act. On other occasions, no such discretion is given to the court so that when a certain set of facts is proved, the court is bound to raise the prescribed presumption. But that is all. The presumption may be rebutted."

A registered document in terms of Section 51A of the Act may carry therewith a presumption of genuineness. Such a presumption, therefore, is rebuttable. Raising a presumption, therefore, does not amount to proof; it only shifts the burden of proof against whom the presumption operates for disproving it. Only if the presumption is not rebutted by discharging the burden, the court may act on the basis of such presumption. Even when in terms of the Evidence Act, a provision has been made that the court shall presume a fact, the same by itself would not be irrebuttable or conclusive. The genuineness of a transaction can always fall for adjudication, if any question is raised in this behalf.

Similar is the view taken by this Court in *V. Narasaiah's* case wherein this Court held thus :-

"the words "may be accepted as evidence"

in the Section indicate that there is no compulsion on the court to accept such transaction as evidence, but it is open to the court to treat them as evidence. Merely accepting them as evidence does not mean that the court is bound to treat them as reliable evidence. What is sought to be achieved is that the transactions recorded in the documents may be treated as evidence, just like any other evidence, and it is for the court to weigh all the pros and cons to decide whether such transaction can be relied on for understanding the real price of the land concerned".

Having noticed the scope of Section 51A of the LA Act as understood by this Court in *V. Narasaiah's* case to be the correct interpretation, we will now consider whether such evidence is mandatorily binding on the authority or the court concerned or it is only an enabling provision.

In relation to the argument pertaining to Section 13 (5) of the Food Adulteration Act a Constitution Bench of this Court in *Mangaldas Raghavji Ruparel & Anr. vs. State of Maharashtra & Anr.* AIR 1966 SC 128 stated as follows :-

"that sub-Section clearly makes the contents of the report of Public Analyst admissible in evidence and the prosecution cannot fail solely on the ground that the

Public Analyst had not been examined in the case, but what value is to be attached to such report must necessarily be for the court to consider and decide."

(Emphasis supplied) While it is clear that under Section 51A of the LA Act a presumption as to the genuineness of the contents of the document is permitted to be raised, the same can be relied upon only if the said presumption is not rebutted by other evidence. In the said view of the matter we are of the opinion the decision of this Court in the case of Land Acquisition Officer & Mandal Revenue Officer vs. V. Narasaiah (supra) lays down the correct law.

Having settled the scope of Section 51A of the LA Act as stated herein above, we will consider the facts in Civil Appeal No.6986 of 1999. In this appeal originally the Land Acquisition Officer awarded Rs. 3707/- per acre for the acquired land. On reference being made by the claimant, the Reference Court enhanced the said compensation to Rs. 8,000/- per acre which was challenged by the beneficiary of the acquisition before the High Court in a writ petition which was allowed and the matter was remanded back for fresh disposal to the Reference Court. Before the Reference Court, the respondent herein produced two certified copies of two sale transactions which were marked as Ex. P1 and P2. The Reference Court, however, refused to place reliance on the said documents on the ground that the contents of the said document were not proved. Hence, it rejected the reference. Being aggrieved by the said order, the claimants-respondents preferred an appeal before the High Court, the High Court disagreeing with the reference court relied on the contents of Ex. P1 and P2 and enhanced the compensation to Rs.15,000/- per acre. While doing so, the High Court proceeded merely on the contents of Ex.P1 and P2 and did not take into consideration the other evidence available on record in regard to the comparative nature of the land, location of the land, the market potentiality of the land etc. and fixed the compensation on an arithmetic calculation based on the value found in Ex. P1 and P2. We do not think this is the correct approach. While it is true the contents of Ex.P1 and P2 should be looked into as evidence produced by a party the evaluation of such evidence should be made taking into consideration other evidence if available on record like other sale transactions that may be produced, the comparative nature of the location, suitability, marketability etc. to fix the market value of the land acquired. Since such a comparative examination of the evidence has not been made by the High Court in the above appeal, even though there was material available on record, we think it proper that the impugned judgment in the above appeal be set aside and the matter be remanded to the High Court for consideration in accordance with law laid down and the directions given in this case. Accordingly, this appeal succeeds to the extent stated herein above.

The facts of the other cases being different, we think it appropriate that it is not necessary for a 5-Judge Bench to decide the issues involved in these cases, because the question of law has been decided in C.A. 6986/1999. Therefore, these appeals should be placed before an appropriate Bench of this Court for final disposal. It is ordered accordingly.