

(1984) 12 P&H CK 0004

High Court Of Punjab And Haryana At Chandigarh

Case No: First Appeal From Order No. 881 of 1983

Kundan Lal alias Kundan Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision: Dec. 10, 1984

Acts Referred:

- Acquisition of Immovable Property Act, 1952 - Section 8(b)

Hon'ble Judges: S.P. Goyal, J

Bench: Single Bench

Advocate: M.L. Sarin and Mr. D. Khanna, for the Appellant; G.S. Chawla, for the Respondent

Judgement

S.P. Goyal, J.

This judgment will dispose of eleven appeals, F.A.O. Nos. 801 to 809, 955 and 960 of 1983, thirteen Cross-Appeals, F.A.O. Nos. 49 to 61 of 1984 filed by the State and two Cross Objections filed by the claimants in F. A. O. Nos. 49 and 55 of 1984 as all of them have arisen out of a common award of the Arbitrator under Requisitioning and Acquisition of Immovable Property Act, 1952 (hereinafter called the Act).

2. The Union of India acquired a vast area of land in Pathankot tehsil for defence purposes under the Act and the competent authority awarded the compensation at the rate of Rs. 60/- per marla. Feeling dissatisfied with the price allowed, the landowners filed a claim u/s 8 (b) of the Act For determination of the market value of the acquired land, Shri D. S Dhaliwal, Additional District Judge, Gurdaspur, was appointed Arbitrator by the Governor vide notification dated April 28, 1983 After considering the evidence led by the parties, the Arbitrator enhanced the market value of the acquired land to Rs. 300/- per marla vide award dated August 19, 1983. Against that award, 11 claimants have come up in appeal whereas the State has filed 13 cross-appeals as detailed below.

3. Before the Arbitrator, 6/7 instances of sale were relied upon by the claimants and 3 by the State. The sale instances. Exhibit A-3 and A-7 were ignored as the sales, subject matter of these mutations took place long before the date of acquisition. The sale instances, the subject-matter of mutations, Exhibits A 6 and A-8 were ignored on the ground that the same had taken place after the notification. The sale transactions, the subject matter of Exhibits A-4 and A-5, which took place 8 months and a week respectively prior to the notification were found to be relevant. Vide Exhibit A-5, land measuring 15 marlas was sold at the rate of Rs. 450/- per marla and Exhibit A 4 10 marlas of land at the rate of Rs. 480/- per marla. As these instances related to a very small piece of land, the Arbitrator thought it proper to reduce the price by one-third for assessing the market price of the land in dispute. Reference was also made to Exhibit A-9, a judgment of this Court (Hoshnak Singh v. Union of India 1983 C. L. J. 480, wherein the price of the adjoining land acquired on January 25, 1965 was assessed at Rs. 250/- per marla. The Learned Counsel for the Appellant, however, urged that he would not rely on the sale instances, Exhibits A-4 and A 5 and claimed that the market price should have been assessed by increasing the price assessed in Hoshnak Singh's case (supra) by 30 per cent because of the lapse of a period of four years and nine months between the earlier acquisition and the present one. I am, however, unable to accept this contention because of the land, the subject matter of the earlier acquisition, was close to the abadi of the city of Pathankot. Cinema and a convent School already existed in the said land prior to the acquisition which would be evident from the following observations made concerning the potentiality of the land by the learned Judge:

So far as the potentiality of the land acquired in village Daulatpur is concerned the same is not in dispute. It is even admitted by R.W I Hans Raj Patwari from the office of Military Land Acquisition Collector, Pathankot, that "opposite the acquired land is abadi. These abadies are within Pathankot Road. It is 1-1/2 furlongs from General Bus Stand. "Kiran Cinema and Convent School are in acquired land" Besides the other evidence on record, the site plan Exhibit A-I produced and proved by the claimants and the correctness of which is not in dispute, not only supports the above noted statement of R.W.1 but further reveals that the acquired land is practically surrounded by the habitation of the town. It is located virtually in the cross section of Amritsar-Pathankot and Pathankot Sujjanpur roads. At the back of the acquired land is the Abrol Nagar abadi which again is linked by a metalled road with the Amritsar-Pathankot road. It is, therefore, more than clear that the suit land had acquired a great potential for being used as a residential or even a commercial area.

From a perusal of the map. Exhibit A-2, it would be revealed that the present land though adjoins the land earlier acquired is further away from the inhabited area and, therefore, does not have that potential of being used as residential area as the former had Its market value has been assessed at Rs 300/- per marla which is 20 per cent more than the earlier price. Even if the average price per marla of the sale

instances, Exhibits A-4 and A-5 is made the basis then the market price of the land in dispute would not be more than Rs 300/- per marla because while determining the price of a large chunk of land the price paid for a small piece of land has to be slashed by 36 per cent.

4. As regards the cross appeals, the Learned Counsel for the Union of India relied only on one instance of sale, the subject matter of Exhibit R-4 whereby 8 marlas of land was sold for Rs. 800/-. From the perusal of the map it would be found that this piece of land is situate downward from I.T I. and S. D. College and there does not seem any tendency of the residential area coming up towards that side. This instance was, therefore, not rightly relied upon by the Arbitrator while assessing the price of the land in dispute. The Arbitrator thus correctly assessed the market price of the acquired land at the rate of Rs. 300/- per marla and there is no scope of interference with that finding in these appeals.

5. During the pendency of these appeals, the Land Acquisition (Amendment) Act, 1984 has been enforced with effect from September 24, 1984. According to the provisions of the Amendment Act, interest and solatium is payable at the enhanced rate even in case the award was made after April 30, 1982. The claimants, therefore, shall be entitled to interest and solatium at the enhanced rate according to the amended law upto date. Consequently, the appeals and cross-objections are dismissed subject to the modification that the interest and solatium shall be payable to the claimants at the enhanced rate according to the Amendment Act, 1984. In these circumstances of the case, the parties are left to bear their own costs.