

(1992) 12 P&H CK 0002

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular First Appeal No. 1720 of 1989

Brijinder Singh

APPELLANT

Vs

The Land Acquisition Collector,
P.S.E.B. and Another

RESPONDENT

Date of Decision: Dec. 2, 1992

Acts Referred:

- Land Acquisition Act, 1894 - Section 23

Citation: (1993) 104 PLR 412

Hon'ble Judges: N.K. Kapoor, J

Bench: Single Bench

Advocate: M.L. Sarin, Hemant Sarin and Vikas Suri, for the Appellant; H.S. Toor and J.S. Toor, for the Respondent

Final Decision: Allowed

Judgement

N.K. Kapoor, J.

This judgment shall dispose of the following Regular First Appeals filed by the claimants :-

R. F. A. No. 1720 of 1989.

R. F. A. No. 1721 of 1989.

R. F. A. No. 1821 of 1989.

R. F. A. No. 1822 of 1989.

R F. A. No. 1692 of 1988.

AND the following appeals filed by the Punjab State Electricity Board :-

R. F. A. No. 2094 of 1989.

R. F. A. No. 2095 of 1989.

R. F. A No. 2096 of 1989.

R. F. A. No. 2097 of 1989.

3. Land measuring 151 Kanals 10 Marias was acquired by the State of Punjab vide Notification u/s 4 of the Land Acquisition Act issued on 9th January, 1985 and published in the Government Gazette on 14th January, 1985 for the purpose of construction of a Power House No. 3, U. B. D. C. Stage-II-Project Malikpur (Pathankot) situate in village Narot Mehra Tehsil Pathankot. Notification u/s 6 too was issued. Though the proposal was for the acquisition of land measuring 151 Kanals 10 Marias, during the proceedings it was stated that only an area of 124 Kanals 16 Marias was being acquired. Land Aquisition Collector awarded compensation to different right holders vide award dated 15th January, 1986 with regard to land, itrees and structure. Right holders were also awarded 12 per cent increase per annum u/s 23(1A) of the Land Acquisition Act as well as statutory solatium at the rate of 30 per cent

3. Claimants feeling dissatisfied with the quantum of compensation presented applications u/s 18 of the Land Acquisition Act for reference to the court for enhancement of compensation. Court vide order dated 20th December, 1986 consolidated the cases of Puran Singh and Brijinder Singh appellants on the ground that land of these two persons adjoin each other as well as these raise the same question of law and fact.

4. It may be noticed that Collector awarded compensation in respect of land at the rate of Rs. 22,800/- per acre for "chahi" and "nehri zamindari" land and at the rate of Rs. 20,61/- per acre for "barani" land. Claimants in their application u/s 18 of the Act contested the compensation amount awarded by the Collector terming this to be wholly inadequate. It was pleaded that the potential value of the land was very high as the land is centrally located in fact could be sold for extension of village abadi. There is 25-bed hospital in close proximity to the land acquired even the trend of extension of abadi of village Narot Mehra is towards the acquired land. It was further pleaded that this village has abadi of about 10,000 persons, 25-bed hospital, two dispensaries, three primary schools, one Government Middle School for Girls, one High School having vocational classes, Cold Storage, Grain Market, Petrol Pump, Post Office, Bank facilities and a Power House is in existence, Sarvshri Puran Singh and Brijinder Singh further pleaded that compensation awarded for the fruit bearing trees is also inadequate and not in accordance with the latest guidelines laid down by this Court.

5. Respondents put in appearance and controverted the various averments made by the claimants. It was maintained that Land Acquisition Collector gave due consideration to the situation of the land and the prelevant market price It was also stated that 25 bed hospital is not near the acquired land. Even averments made with

regard to the existence of industrial activity was not accepted as correct. On these pleadings, the Additional District Judge framed the following issues :-

1. What was the market value of the land at the time of acquisition ? OPA.
2. Whether applicants are entitled to solatium at the rate of 30 per cent ?
- 3 Relief.

6. Additional District Judge, after examining the evidence led by claimants as well as the State found no merit in the plea of the claimants for enhancement of the compensation but all the same choose to award compensation at a uniform rate of Rs. 22,800/- per acre in respect of all kinds of land. As regards the compensation payable to the claimants in respect of fruit bearing trees, the learned Additional District Judge relied upon the formula for evaluation of fruit trees published by the Department of Horticulture Punjab on 15th May, 1985 and granted the compensation accordingly. The claimants were also granted increase of 12 per cent per annum in terms of Section 23(1A) of the Land Acquisition Act. They were also found entitled to solatium at the rate of 30 per cent per annum and interest at the rate of 9 per cent per annum on the enhanced amount for the first one year from the date of possession and at the rate of 15 per cent per annum for the subsequent period till realisation. Feeling dissatisfied with the award of the Land Acquisition Court, the claimants as well as P. S. E. B. have filed these appeals.

7. The first submission of the learned counsel for the appellants is that the learned Additional District Judge has erred in law in not properly perusing the relevant material on record with regard to the location of the acquired land and its potentiality. Elaborating he referred to the statement of Piare Lal AW-2 in this regard. As per statement of AW 2, Narot Mehra village is divided into four abadies. Three of these abadies are towards eastern side of the acquired land and one abadi falls towards western side. This witness further deposed that G. T. Road as well as railway track pass from the area of Narot Mehra which has population of about 7000 people. He further testified that there is one High School, one Girls Middle School, three Primary Schools, one Hospital, two dispensaries and the hospital is quite adjacent to the acquired land. He further stated that there are saw mills, flour mills, carpenter workshop and a petrol pump in the area of village Narot Mehra, Pathankot city was stated to be at a distance of less than 7 kilometers from the village and the land acquired is at a distance of less than 1 kilometer from the railway station and the main metalled road. He also produced copy of the extract of 'akshazra Ex. A-2 wherein land acquired and the abadi of the village was duly indicated. According to the counsel this witness is none other than a functionary of the revenue department of the State. Even otherwise his statement has gone unrebutted. After referring to the factual aspect of the matter counsel drew attention to the various bonafide sale deeds near about the acquired land which disclosed a much more price than the one awarded by the Land Acquisition Court.

Counsel mainly relied upon the following sale transactions which are hereunder produced for facility of reference :-

Sr.	Ext.	Date of sale	Area	Consideration	Kind/purpose/User	Rate per acre	No.
	No.						
1.	A-1	1.3.84	4-3	Rs. 37,350/-	For manure pits	Rs. 72,000/-	
2.	A-11	11.12.78	1-0	Rs. 8000/-	as plot	Rs. 64 000/-	
3.	A-12	17.2.83	0-9	Rs. 13,950/-	for residential/commercial	Rs. 223500/-	
4.	A-13	3.1.84	1-10	Rs. 24880/-	---	Rs. 1,17,000	
5.	AW9/A	17.8.84	0-10	Rs. 15000/-	as plot	Rs. 240000	

According to the counsel all these transactions except A-11 pertain to the year 1983 and 1984. In view of this material evidence court ought to have taken an average of these bonafide sale transactions and after applying a cut in view of the smallness of the area sold vide these sale deeds, the price so arrived ought to have been granted to the claimants. Even if other sale transactions namely Ex A 12, Ex. A-13 and Ex. AW-9/A are ignored since these sale deeds are for residential commercial purposes, vide sale transaction Ex. 4-1 dated 1.3 1934 vide which an area measuring 4 K-3M was sold by Balbir Singh in favour of Punjab State could not be said to be in any manner dubious and not representing the true market value in the year 1984. This land was acquired by State of Punjab for manure pits. This gives price per acre at Rs. 72,000/-.

8. As regards the compensation awarded by the Additional District Judge in respect of fruit bearing trees of the appellants, it was contended by the counsel that acquisition in the present case being of 14.1.1985, formula for evaluation of fruit trees published on 15th May, 1985 ought not to have been taken into consideration and on the other hand as approved by the Division Bench of this Court in Ranjit Singh v. Union Territory of Chandigarh (1983) 85 P. L. R. 471. Earlier formula approved by the Horticulture Department of Punjab 1966 ought to have been taken into consideration and keeping in view the index of Whole Sale price as prevalent in the year 1966 vis-a-vis the date of acquisition i.e. 14.1.1985 necessary increase over and above value fixed as per publication of 1966 ought to have been granted. In any case since this formula of 1988 for Valuation of Fruit Trees was placed on record by the claimant with a view to seek enhancement of the amount of compensation, the same ought not to have been considered so as to deprive the claimants of their "legitimate right to receive compensation in respect of fruit bearing trees in view of the variation with regard to the age of the fruit bearing trees between these two publications. Counsel for the Punjab State Electricity Board on the other hand has urged that the award of the Additional District Judge is perfectly legal and just and same does not call for any interference. According to him, the Additional District

Judge has been quite liberal as despite having come to the conclusion on the basis of sale deeds placed 011 record by the respondent board that the average price of these sale deeds does not come to more than Rs. 21,000/-, yet, has chosen to uphold the compensation as awarded by the Collector i.e. at the rate of Rs. 22,860/-per acre. His precise submission is that various sale transaction relied upon by the respondent and placed on record as Ex. R-2 to Ex. R 19 disclose a price between approximately Rs. 6000/- to Rs. 20,000/-, leaving aside the post acquisition sale Ex. R-4 dated 25.10.1985 which gives an price of Rs. 22,222/- per acre. As regards the sale deed Ex. A-1 vide which the State of Punjab acquired land for manure pits it was urged that this price was paid keeping in view the peculiar situation and for the reason that the site was found more suitable for the purpose envisaged. This way, this sale deed too was rightly ignored by the learned Additional District Judge.

9. As regards the claim of the claimants with regard to the fruit bearing trees on the basis of publication of 1966, the counsel urged that in view of the latest publication i.e. formula for Evaluation of Fruit Trees published by the Department of Horticulture, Punjab on 15.5.1985, the court rightly chose to award the compensation to the claimants/appellants in respect of their fruit bearing trees and thus the same also does not call for any interference.

10. I have Heard the learned counsel for the parties and have perused the evidence on record.

11. Location of the land and its surroundings has been appropriately depicted in Akashazra Ex. A-2 wherein acquired land is shown in red colour whereas abadi is shown in green shade. A bare perusal of this map reveals that village Narot Mehtra is divided into four abadies three of which are situated towards eastern side of the acquired land and one falls towards the western side. Admittedly this village has large population. It has a High School, a Girls Middle School, a hospital, dispensaries, saw mills, flour mills and a petrol pump This village is approximately at a distance of 7 kilometres from Pathankot Thus, there is no escape from the conclusion that land of this village has sufficient potential of the development.

12. There is, however, serious contest between the parties as to whether hospital stated to be adjacent to the acquired land is in existence or not 7 For this reference can be made to the statement of Piara Lal, AW-2, Janak Raj Draftsman AW-6 and appellant Puran Singh According to AW-2 there exists a hospital which is quite adjacent to the acquired land. Janak Raj Draftsman from the office of the Panchayati Raj AW-6 has deposed on the basis of the official record that administrative approval for the construction of 25 bed hospital in village Narot Mebra at the cost of Rs. 3 lacks was sanctioned on 12.1.1982 and tenders were called for 17.3.1982. The tenders of Sultanpur Youth Labour and Construction Society were accepted. Puran Singh in his deposition has stated that his land abuts the site of the hospital. No evidence has been led by the respondents in rebuttal to this evidence of the

claimant All the same, the learned Additional District Judge some how was more swayed by the statement of Surjit Singh AW-3 who took the photograph depicting the foundation stone of the hospital which was then laid by the Governor of Punjab on 8.12.1981. According to Additional District judge since Surjit Singh took this photograph on 25.10.1986, it means that upto that date the hospital was just a non starter. Merely for the reason that claimants with a view to prove the existence of the hospital happened to take the photograph depicting only the foundation stone of the hospital, was no ground to discard the testimony of AW-2, AW-6 as well as of AW-3 especially when no evidence has been led by the other side.

13. Law with regard to awarding of compensation is well settled The compensation payable to the owner of the land is the market value which is determined by reference to the price which a seller might reasonably expect to obtain from a willing purchaser, but as this may not be possible to ascertain with any amount of precision, the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard. The land acquired has therefore, to be valued not only with reference to its condition at the time of the declaration u/s 4 of the Act but its potential value also must be taken into account The sale deeds of the lands situated in the vicinity and the comparable benefits and advantages which they have, furnish a rough and ready method of computing the market value. In this case the claimants; have relied upon Ex. A-1, Ex. A-11, Ex. A-12, Ex. A 13 and Ex. AW 9/W whereas respondents have referred sale transactions Ex. R-2 to Ex. R-19. Before adverting to the case of the claimants, it will be more appropriate to examine the evidence of the respondent As noticed above all these sale transactions Ex. P-2 to Ex. P-19 disclose a price ranging between Rs. 6000/- to Rs. 20,000/- except Ex. R4 which is a post acquisition sale. These sale deeds are liable to be ignored on the short ground that even the Land Acquisition Collector did not think is to be the relevant sale transaction for evaluating the market value of the land In fact it is the case of the respondents themselves that the acquired land could fetch between Rs. 20,500/- to Rs. 22000/- per acre. Accordingly I am also of the view that these sale transactions produced by the respondents are liable to be ignored while determining the market value of the acquired land. Now examining the evidence of the claimants except for Ex. A-1 as sale deed dated 1.3.1984, other transactions are in respect of very insignificant areas. Vide Ex. A-12 9 Mariahs of land had been sold ostensibly for residential/commercial purposes. Similarly Ex. AW-9/A dated 17.8.1984 10 Mariahs were sold for Rs. 15,000/- as a plot Even vide Ex. A 13 only 1 K-10 Mariahs were sold. These sale transactions as depicted in site plan Ex. A-2 are at far of places and have a better location. Thus the same cannot be made basis for evaluating the market value of the land of the claimants. The--only relevant sale deed which needs close scrutiny is the sale executed on 1.3.1984 in respect of areas 4 Kanals 3 marlas in favour of States of Punjab for consideration of Rs. 37,500/- which thus reflects a price of Rs. 72,000/- per acre. Bonafide of this transaction is not in dispute and thus the same can be safely relied upon All the same it cannot be last

site of the fact that the land acquired vide Ex A-1 is on the periphery of the habitation of the village and is at a distance from the acquired land. Not only this, the area sold measures only 4 K-3 Maria whereas the acquisition in the present case in respect of a large chunk of land i.e. 124 K - 16 M. Thus, some deduction is necessarily to be made. There is no hard and fast rule as how much deduction should be made for this factor- It is essentially a question of fact depending on the facts and circumstances of each case. In some of the Judgments a cut to the extent of 1/3rd of the consideration represented by such sale transaction has been imposed 1988 P. L. J. 366 , whereas the apex Court in Chimanlal Hargobinddas v. The Special Land Acquisition Officer 1988 A. C. C. 491, upheld the cut imposed by the High Court to the extent of 25 per cent of the price so disclosed by the transaction. Keeping in view that land in the instant case has been acquired for the construction of a Power House and that too by way of extension to the existing Power House cut to the extent of 25 per cent in the price as disclosed by sale Ex. A-1 would be just and appropriate in the circumstances of the case. This way the price per acre comes to Rs. 54,000/- per acre. Since the sale vide Ex. A-1 is dated 1-3-1984 whereas the present acquisition is of 9.1.1985, the proportionate increase in view of the time gap in terms of judgment in Inder Singh's case⁴ is further to be granted as one cannot lose sight, of the fact that prices are ever increasing. Calculating thus compensation payable to the appellant comes to Rs. 68040/- roughly. Accordingly. I determine compensation in respect of land acquired at the rate of Rs. 68,000/- per acre uniformly

14. As regards determination of compensation payable in respect of fruit bearing trees, counsel for the claimants urged that Division Bench in Ranjit Singh v. Union Territory of Chandigarh (1988) 94 P.L.R. 190, referred to a publication titled "Basic Principles and Methods" of evaluation of Fruit Trees, published by S. Harbans Singh, former Director of Horticulture Himachal Pradesh and thereafter granted the proportionate increase In view of the rise in the whole Price Index as prevalent in 1966 vis-a-vis the date of the acquisition and consequently granted the increase i. e. the Price Index of the year 1966 and the proportionate rise in the Whole Sale Price Index when the acquisition is made.

15. Director of Horticulture Punjab has come up with another publication for evaluation of fruit trees. As per introduction to this publication it was stated that earlier compensation structure had become obsolete with the passage of time both with respect to the fixed costs as well as to the annual returns expected from the trees. Thus a committee was formed to revise the formula and it is after consideration of the relevant material i.e. longevity of the trees, average expected returns and other relevant factors that a new formula was devised for calculating the compensation to be paid to the person for their fruit bearing trees. This is dated 15.5.1985. There is a slight variation between the charts as given in the formula of 1966 and of 1985 (given below) with regard to various expenses--recurring and non-recurring age at which a tree becomes fruit bearing etc. etc. :-

TABLE GIVEN IN FORMULA OF 1966

S. Kind of fruit	Prebaring or sapling stage or basic value		Bearing stage			
	No.	Non-recurring (in rupees)	Recurring per year age	Age at which the trees come into bearing	Average bearing life in years	Yearly income froma class I tree (in Rs.)
1 2	3	4		5	6	7
1. Mango grafted	5.00	5.00		5th	50	60.00
2. Litchi						
3. Jack fruit	5.00	5.00		8th	50	40.00
4. Mango seedlings	5.00	5.00		8th	60	40.00
5. Jaman	5.00	5.00		8th	60	25.00
6. Loquat	5.00	5.00		6th	40	40.00
7. Chiku						
8. Grape	500	5.00		3rd	30	10.00
9. Gauva	500	500		4th	30	2500
10. Malta	5.00	5.00		5th	25	60.00
11. Sangtra						
12. Grape fruit						
13. Fig. Superior	5.00	5.00		5th	20	35.00
14. Lemon	5.00	5.00		4th	20	4000
15. Kagzi Lime	5.00	500		5th	30	50.00

16.Galgal	5.00	5.00	4th	25	3500
17.Ber	5.00	5.00	5th	5	25.00
18.Falsa	500	500	2nd	10	500
19.Banana	200	◆	2nd	1	10.00
20.Papaya	5.00	5.00	5th	45	60.00

TABLE GIVEN IN
FORMULA OF
1985

Statement for the evaluation
of fruit trees.

S. Kind of fruit	Pre-bearing orsapling stage		Age at which the tree comes into bearing(years)	Average bearing life (Years)	Yearly income from class I trees (Rs.)
	No.	Non-recurring per plant	Recurring per year		
1 2	3	4	5	6	7
1. Almond	15.00	15.00	10.	4th	20
2. Amla	15.00	15.00	10	5th	70
Seedling					
/grafted					
3. Ber	15.00	15.00	30	4th	50
4 Ber	◆	◆		5th	50
Seedling					
5. Chiku	15.00	15.00	10	8th	40
6. Fig	15.00	15.00	10	5th	20
7. Grape	15.00	15.00	10	3rd	30
8. Guava	15.00	15	10	4th	0
		00			50.00

9. Jack fruit	15.00	1500	10	8th	70	75.00
10.Jaman	15.00	15.0	10	8th	75	50.00
11.Kagji Lime	1500	1500	10	5th	25	10000
12.Kinnow	15.00	15.00	10	4th	25	150.00
13.Litchi	15.00	15.00	30	8th	75	150.00
14.Loquat	15.00	15.00	10	5th	40	8000
15.Mango grafted	15.00	15.00	20	5th	75	10000
16.Mango seed-ling	1500	15.00	10	8th	75	100.00
17.Banana (Papaya)	1200	12.00	20	2nd	5	25.00
18.Peach	15.00	15.00	10	3rd	20	150.00
19.Pear	15.00	15.00	10	7th	75	100.00
20.Phalsa	15.00	1500	10	2nd	20	20.00
21.Plum	1500	15.00	10	5th	20	75.00
22.Pomegranate	1500	15.00	10	4th	20	5000
23.Rough tenien	?	?	?	4th	25	15.00
24.Sangtra	15.00	15.00	10	5th	50	100.00
25.Sehtut	1500	15.00	10	4th	40	50.00
26.Sweet lime/ lemon galgal	1500	1500	10	4th	25	10000
27.Sweet orange grape fruit	15.00	15.00	10	5th	30	100.00

There is no variation between the two formulae with regard to the mango seedling
 As per both these publications Mango trees start bearing fruit from the 8th year.

However, there is a variation with regard to litchi trees As per "956 formula the litchi trees start bearing fruit from the fifth year whereas according to 1985 formula it starts from the eighth year and for this reason counsel for the appellant has placed reliance upon the earlier publication of 1966. Except placing on record the publication dated 15.5.1985, pertaining to determination of fruit bearing trees of the acquired land, no person has been examined in this regard. Respondent State has even not taken care either to controvert the assertion of the claimants that the trees were fruit bearing nor has examined any Horticulture Expert who on the basis of some scientific research could raise legitimate doubt on this aspect in fact Collector vide his award has awarded compensation in respect of fruit bearing trees though on the basis of publication of 1966. Both the claimants namely Puran Singh and Brijinder Singh made specific averments in their application u/s 18 of the Act that various qualities of fruit bearing tress upon the acquired land were fruit bearing at the time of the acquisition. Their statements have remained unchallenged. Accordingly for the purpose of awarding compensation I treat the trees of claimants as fruit bearing in respect of Litchi though as per Formula of 1985 these have not become fruit bearing. Even otherwise no reason has been given for enhancing the age of fruit bearing trees of Litchi from 5th year to 8th year. Thus the claimants are entitled to compensation in respect of fruit bearing trees. All the same the latter publication being close to the date of acquisition it would be appropriate to award the compensation at the rate as given in this publication of Government of Punjab dated 15.5.1985 instead of taking the valuation as given in the publication by Sardar Harbans Singh of 1966 and thereafter awarding the necessary increase in view of the rise in the Whole Sale Price Index. Resultantly I accept these appeals and allow compensation i.e. at the rate of Rs. 68,000/- per acre in respect of the acquired land and also award compensation for the fruit bearing trees as per rates mentioned in publication of 1985. In addition to this the claimants are also entitled to 12 per cent increase as per Section 23(1A) of the Act and solatium at the rate of 30 per cent and interest at the rate of 9 per cent per annum on the enhanced amount for the first one year from the date of taking possession and at the rate of 15 percent per annum for the subsequent year till realisation with proportionate costs It is clarified that fruit bearing trees pertain to R. F. A. Nos. 170 and 1721 only. Consequently the claimant's appeals are allowed with proportionate costs whereas the State appeals are dismissed.