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

Regular First Appeal No. 1720 of 1989

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 2, 1992

Acts Referred:
Land Acquisition Act, 1894 â€" 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. 20,61l/- 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 6f 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 6f 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 ate hereunder produced for facility of reference : -

Sr. Ext. Date of Area Consideration Kind/pur- Rate per No.

No. sale pose/User acre

1. A-1 1.3.84 4-3 Rs. 37,350/- For manure Rs. 72,000/-

pits

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 residen- Rs. 223500/-

tia1/com-

mercial

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 acquire 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 ease 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-l as sale deed dated 1.3.1984,

other transactions are in respect of very insignificant areas. Vide Ex. A-12 9 Marias of land had been sold ostensibly for residential/commercial

purposes. Similarly Ex. AW-9/A dated 17.8 1984 10 Marias were sold for Rs. 15,000/--------as a plot Even vide Ex. A 13 only 1 K -10 Marias

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 peripheri 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 Marias 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 l/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-l 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 loose 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

Prebaring or sapling stage or Bearing stage

basic value

S. Kind of fruit

No. Non-recurring Recurring per Age at which the Average bearing Yearly income

(in rupees) year age trees come into life in years froma class I tree

bearing (in Rs.)

1 2 3 4 5 6 7

1. Mango grafted 5.00 5.00 5th 50 60.00

2. Litchi

3. Jack fiuit 5.00 5.00 8th 50 40.00

4. Mango 5.00 5.00 8th 60 40.00

seedlings

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 Ã¯Â¿Â½ 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.

Pre-bearing orsapling Age at which the Average Yearly

tree comes into bearing life income from

stage or basicvalue

bearing(years) (Years) class I trees

S. Kind of fruit (Rs.)

No. Non- Recurring per Mortality

recurring year age per

per plant tree (Rs)

1 2 3 4 5 6 7 8

1. Almond 15.00 15.00 10. 4th 2O 75.00

2. Amla Seedling 15.00 15.00 10 5th 70 50.00

/grafted

3. Ber 15.00 15.00 30 4th 50 75.00

4 Ber Seedling Ã¯Â¿Â½ Ã¯Â¿Â½ 5th 50 4000

5. Chiku 15.00 15.00 10 8th 40 80.00

6. Fig 15.00 15.00 10 5th 20 50.00

7. Grape 15.00 15.00 10 3rd 30 5000

8. Guava 15.00 15 00 10 4th 0 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 15.00 15.00 20 5th 75 10000

grafted

16. Mango seed- 1500 15.00 10 8th 75 100.00

ling

17. Banana 1200 12.00 20 2nd 5 25.00

(Papaya)

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 Ã¯Â¿Â½ Ã¯Â¿Â½ Ã¯Â¿Â½ 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/ 1500 1500 10 4th 25 10000

lemon galgal

27. Sweet orange 15.00 15.00 10 5th 30 100.00

grape fruit

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. 17 0 and 1721 only. Consequently the claimant''s appeals are allowed with proportionate costs whereas the State appeals are dismissed.