

(1995) 12 P&H CK 0016

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular First Appeal No. 1313 of 1989

Kalawati Devi

APPELLANT

Vs

Haryana State and Another

RESPONDENT

Date of Decision: Dec. 15, 1995

Acts Referred:

- Land Acquisition Act, 1894 - Section 23

Citation: (1996) 113 PLR 471

Hon'ble Judges: V.K. Jhanji, J

Bench: Single Bench

Advocate: S.K. Mittal, for the Appellant; M.S. Jain Adarsh Jain, Gopi Chana and Jaswant Jain, R.C. Setia, Addl. A.G. and Rita Kohli, for the Respondent

Judgement

V.K. Jhanji, J.

This shall dispose of Regular First Appeals No. 721 to 730 of 1988, 813 to 820 of 1988, 862 and 863 of 1988, 1083, 1277, 1278, 1281, 1309 to 1313, 1314, 1348, 1451, 1452, 1453, 1844, 1845, 2290 and 2767 of 1989, as common question of law and facts is involved therein. Facts are taken from Regular First Appeal No. 1313 of 1989 vide notification dated 21.1.1982 issued u/s 4 of the Land Acquisition Act (in short, the Act), land was acquired for public purpose, i.e. for development and commercial sector, namely Sector 3, Rewari.

2. The Land Acquisition Collector awarded compensation at the rate of Rs. 22,500/- for Chahi land and Rs. 16,500/- for Gair Mumkin Bhatta. The land owners were not satisfied with the award and therefore, made reference u/s 18 of the Act. References came to be decided by some of the Additional District Judges wherein some, cases awarded compensation at the rate of Rs. 43,560/ per acre and in some cases, out of which R.F.A. Nos. 1083, 1277, 1278, 1281, 1309, 1314, 1348, 1451, 1452, 1453, 1844, 1845, 2290, 2767, 1313 of 1989 and 2691 of 1992 have arisen, have awarded Rs. 72,000/- per acre.

3. In all the Regular First Appeals, the claimants are aggrieved of the quantum of compensation awarded by the Additional District Judges. However, in R.F.A. Nos. 727 and 729 of 1988, claimants are also aggrieved of the compensation awarded by the Additional District Judges in regard to structures and wells.

The acquired land is situated within the municipal area of Rewari and located next to Model Town. Its location has been depicted in plan, Exhibit P.W.4/A. It shows that there is only a road between Model Town and the acquired land. The Additional District Judge has also noticed that the land is located near Bus Stand and other important buildings. It has further been noticed that the site has been acquired for development of Sector 3 for setting up residential and commercial colony by the Haryana Urban Development Authority. The town is well-known for metal industries and is located 50 kms. away from Gurgaon and 90 kms. from Delhi and is at a distance of nearly 12 kms. from National Highway No. 8, i.e., road going from Delhi to Jaipur. Anaj Mandi and Housing Board Colony are on the other side of the land acquired and are at distance from Model Town whereas the land acquired is adjacent to Model Town. Area under Anaj Mandi and Housing Board Colony was acquired on 29.12.1970 when notification u/s 4 of the Act was issued for acquiring a huge tract of land measuring 155 acres, 4 kanals and 6 marlas for establishment of a Mandi Township including residential and factory areas. The Housing Board Colony as well as Anaj Mandi had already been developed. The fact that acquired land had high potentialities for being used as residential, commercial and industrial purposes has not been disputed by the counsel for the State. It has also come on record that amenities like water, electricity, sewerage and telephone etc. are available in Model Town which is adjacent to the acquired land. It is keeping in view the potential and availability of the said amenities that the market value of the land at the time of issuing notification u/s 4 of the Act is to be determined.

4. The instances of sale which have been taken note of by the Additional District Judge have been mentioned in the table in para 15 of the Judgment. The table may be noticed :-

Document	Area sold	Date of sale	Price per acre	
Ex.P.8	11 Marlas	04.06.81	13,500/-	1,96,000
Ex.P.15	Kanal	20.11.81	39,000/-	3,12,000
Ex.P.10	6 Marlas	13.11.80	11,000/-	2,93,000
Ex.P.27	18 Marlas	15.04.80	9,000/-	8,10,000
EX.P.13	5 Marlas	02.11.77	45,000/-	72,00,000
Ex.P.17	Kanal	28.12.81	9,000/-	72,00,000
Ex.P.24	Kanal	30.04.79	9,000/-	72,00,000
Ex.P.26	Kanal	04.02.80	9,000/-	72,00,000
Ex.P.1	125 Sq.Yds.	20.08.81	45,800/-	18,32,500
Ex.P.2	125 Sq.Yds.	20.08.81	50,000/-	20,00,000
Ex.P.3	125 Sq.Yds.	20.08.81	45,000/-	19,20,000

Ex.P.4	125Sq.Yds.	10.07.81	41,500/-	16,60
Ex.P.5	125Sq.Yds.	10.07.81	45,500/-	15,80
Ex.P.5	5 Maria	15.01.81	16,500/-	5,20
Ex.P.6	2 Maria	21.01.81	3,30,000/-	2,64,00
Ex.P.7	21Sq.Yds.	21.09.82	20,000/-	4,56,90
Ex.P.9	18 Marlas;	04.06.81	22,280/-	1,98
Ex P.10	17 Marias	25.09.81	30,000/-	2,82
Ex.P.11	11 Marias	10.12.81	30,000/-	4,36
Ex.P.12	K-7M	11.09.81	16,000/-	94
Ex.P.14	7 Marias	10.09.81	4,000/-	93
Ex.P.18	1K - 19 M	27.07.81	24,200/-	99
Ex.P.19	1001 Sq. Yds.	16.11.81	3,000/-	14
Ex.P.20	6 Marias	19.03.80	5,000/-	1,33
Ex.P.21	18 Marias	04.06.81	22,280/-	1,97
Ex.P.22	11 Marias	04.06.81	13,500/-	1,90
Ex.P.23	11 Marias	13.05.81	13,500/-	1,88
Ex.P.25	19 Marias	04.02.80	9,000/-	75
Ex.P.29	UKanals	23.05.79	11,500/-	92
Ex.P.30	10 Marias	25.11.81	12,000/-	19,20
Ex.P.31	10 Marias	25.11.81	12,000/-	1,92

The first four sale instances given in the table, namely, Exhibits P-8, P-15, P-16, and P-27 are in respect of the acquired land. The learned-Additional District Judge in para 20 of the judgment has noticed that the claimants of these sale-deeds have claimed that they are entitled to the actual price paid by them. The Additional District Judge has further noted that there is no plea on the part of the State that these sale instances are collusive or the price mentioned therein is higher than the prevalent one or might have been brought into existence fictitiously. Sale instances have been held to be genuine and the claimants have been held to be entitled to full price along with other, ancillary expenses. However, the learned-Additional District Judge has not given any reason in his judgment as to why the sale instances of the acquired land could not be made the basis for determining the market value of acquired land. The sale instances which have been made the basis for determining the market value are Exhibits P-13, P-17, P-24 and P-26. These transactions do not relate to the acquired land and are of the years, 1977, 1979 and 1980. Taking the average of these sale instances, the market value of the acquired land has been determined by the Additional District Judge at the rate of Rs. 72,000/- per acre. Although in the table, one kanal area has been shown to be sold for Rs. 9,000/- vide sale-deed dated 28.12.1980 (Ex.P-17) and on the basis of this price per acre has been worked out at Rs. 72,000/- per acre, but perusal of the document, (Ex. P-17) has shown that the area sold under this sale-deed was only 6 marks for Rs. 9,000/- the value of which in acre would work out to Rs. 3,20,000/- per acre. If this mistake had not been committed the average price of sale-instances on the basis of which the

Additional District Judge has determined the market value at Rs. 72,000/- per acre, in fact would have come to Rs. 1,59,000/- per acre.

5. Learned counsel for the appellants have contended that the sale instances relied upon by the learned Additional District Judge do not reflect the true market value. They have contended that these sale instances do not relate to the land acquired and are of the years 1977, 1979 and 1980, whereas the land was acquired in April, 1982. They also contended that Additional District Judge himself has observed that the market value of the land in the area has shot-up from the year 1980-81, but while determining the market value of the land, has totally ignored this aspect of the matter. Counsel further submitted that the sale instances of the acquired land proximate to the date of acquisition ought to have been made the basis for determining the market value. Reference in this regard was made to sale deed, Exh. P-15, dated 20.11.1981 of one kanal which in acres would come to Rs. 3,12,000/-. Counsel contended that this ought to have been fixed as market value.

6. The question thus, arises for consideration is that where sale-instances available are of the land acquired and also of the land situated in the neighbourhood of the land acquired, which out of the two has to be preferred. It has been held by the Supreme Court in [Bangaru Narasingha Rao Naidu and Others Vs. Revenue Divisional Officer, Vizianagaram](#), that there cannot be any doubt that the best evidence of the market value of the acquired land is afforded by transactions of sale in respect of the very acquired land, provided of course there is nothing to doubt the authenticity of the transactions. In [Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala](#), it has been held that when the Courts are called upon to fix the market value of the land in compulsory acquisition, the best evidence of the value of the property is the sale of the acquired land to which the claimant himself is a party, in its absence the sales of the neighbouring lands. The transaction relating to the acquired land of recent dates or in the neighbouring lands that possessed of similar potentiality or fertility or other advantageous features are relevant pieces of evidence. It further held that the underlying principle to fix a fair market value with reference to comparable sale is to reduce the element of speculation. In a comparable sale, the features are: (1) it must be within a reasonable time of the date of notification; (2) it should be a bona-fide transaction; (3) it should be a sale of the land acquired or land adjacent to the land acquired, and (4) it should possess similar advantages. In *State of Punjab and Anr. v. Hans Raj (dead) by L.Rs. Sohan Singh and Ors.* 1995 LACC 25, the Supreme Court has reiterated that it is well settled that genuine and bona-fide sale transactions in respect of the land under acquisition or in its absence the bona-fide sale transactions proximate to the point of acquisition of the lands situated in the neighbourhood of the acquired lands, possessing similar value or utility taken place between a willing vendee and the willing vendor which could be expected to reflect the true value, as agreed between reasonable prudent persons acting in the normal market conditions are the real basis to determine the market value.

7. It thus, stands settled that the sale transaction of the land which is under acquisition, would be a better guide than a sale of other land however similar, as the elements of dis-similarity will be least present when transaction sought to be applied is a previous purchase of the same land which is under acquisition. But in this case also sale transactions must be genuine. In the instant case, the learned Additional District Judge found sale instances, Exhs. P-8, P-15, P-16 and P-27 to be genuine and for that matter, claimants of these sale instances have been held entitled to full price as mentioned in the sale instances along with other expenses incurred by them towards execution of these sale-deeds., In these circumstances, I am of the view that these sale instances, Exhs. P-8, P- 15, P- 16 and P-27 have to be made tile basis for determining the market value of the acquired land.

8. The next question to be determined is as to how the market value of the acquired land is to be determined when the sale instances of the acquired land are of smaller plots. In Regular First Appeal No. 939 of 1991 decided on 7.7.1995, on the basis of judgments in [Administrator General of West Bengal Vs. Collector, Varanasi](#), and a Division Bench Judgment of this Court in [Hukam Chand and Others Vs. Haryana State](#), , it was held "hat where large tracts of land are required to be valued, valuation in transactions with regard to small plots is not to be taken as the real basis for determining the compensation of large tracts of land. The other principle is that where the market value of large block of land is determined on the basis of sale transactions for smaller property, appropriate deduction has to be made for making allowance for the loss of the ac- quired land required to be used for roads, drains, sewers, open spaces and the expenditure involved in providing other amenities like water, electricity etc. The extent of area required to be set apart has to be assessed by the Court having regard to the shape, size and situation of the concerned block of land. There cannot be any hard and fast rule as to how much deduction should be made to account for these factors. It is essentially a question of fact depending upon the facts and circumstances of each case.

9. Notification u/s 4 of the Act was issued on 21.1.1982, whereas sale-instances, Exhs. P-8, P-15, P-16 and P-27 are dated 4.6.1981, 20.11.1981, 13.11.1970, 15.4.1980. for Rs. 1,98,080, Rs. 3,12,080/-, Rs, 2,93,280/- and Rs. 80,000/ respectively. Counsel for the appellants contended that sale-transactions, Exhs. P-27 and P-16 dated 15.4.1980 and 13.11.1980 respectively are not proximate to the date of acquisition and ought to be ruled out for working out the market value. According to the counsel, Exhibits P-8, and P-15 are only two transactions which are proximate to the date of acquisition and possess similar advantages. However, I am not impressed with this argument. Exhibits P-27 and P-16 are within two years from the date of acquisition and cannot be ruled out from consideration and have to be taken to be comparable sales. The average market value on the basis of these transactions, if worked out, would come to Rs. 2,20,440/-. By rounding off, it would come to Rs. 2,20,000/-. The other aspect of the matter is that what cut has to be applied to account for the land required to be set apart for roads, parks, sewerage, water and

electricity lines etc. Counsel for the appellants contended that no cut should be applied and if applied, it should be very minimum because the land acquired is adjacent to Model Town which is already a developed colony having all the facilities and amenities like roads, parks, sewerage, water and electricity lines etc. Counsel cited judgments in *Brijinder Singh v. The Land Acquisition Collector, P.S.E.B. Patiala* 1993 2 104 P.L.R. 412 , and [Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another](#), where 1/4th cut was applied, and judgments in *Anand Samp v. State of Punjab and Anr.*, 1985 P.L.J. 366. *Satya Swami and Ors. v. The Collector (D.C.) Kapurthala and Ors.* 1989 1 95 P.L.R. 56 and *Lai Chand v. State of Punjab and Ors.* 1989 2 96 P.L.R. 555, where 25 per cent cut was applied. The cases cited by the counsel for appellants cannot be taken to be precedents for making cut in the present case because these were decided on their own facts. In the instant case land measuring 67 acres has been acquired for development of residential and commercial sector, namely sector 3. Necessary deduction to the extent of land required for the formation of roads and other civic amenities like parks and open space; expenses of development of sites by laying out roads, drains, sewers, water and electricity lines and the interest on the out-lays for the period of deferment for realisation of price etc. are to be made. Since some of the facilities like water, electricity, telephone etc. are to be made. Since some of the facilities like water, electricity, telephone etc. are available in Model Town which is already a developed colony and touches the acquired land, I am of the view that it would be appropriate if deduction is made to the extent of 40 per cent. Accordingly, the market value of the acquired land is fixed at Rs. 1,32,000/- per acre.

10. In Regular First Appeals No. 727 and 729 of 1988, learned counsel for the appellants submitted that the Land Acquisition Collector determined the compensation on account of acquisition of wells, tube-wells and other structures in the case of claimants in R.F.A. No. 727 of 1988 at Rs. 3,281/- and in the case of claimants in R.F.A. No. 729 of 1988 at Rs. 9,084/- whereas the claimants are entitled to Rs. 37,077/- and Rs. 41,809/- respectively. Reference in this regard has been made to the report of Expert, Exh. PW-7/A and Exh. P.W.-7/D. Counsel, contended that the observation of the learned Additional District Judge in para-11 of the judgment that reports, Exh. P.W.-7/A and Exh. P.W.7/D cannot be relied upon because no representative of the department was present at the time of inspection made by expert, is erroneous inasmuch as the reports could not have been rejected on this ground, particularly when the State had failed to produce any evidence in rebuttal to the one produced by the claimants. Having given my thoughtful consideration to this aspect of the matter and on going through the record. I am of the view that in this regard, no enhancement is called for. The report is an ex-parte one and no notice was given to the department when the Expert inspected the site and determined the market value of the wells and structures. I may also mention that in respect of wells and structures, appellants in their grounds of appeal have not made any grievance with regard to valuation determined by the Land Acquisition Collector

and as affirmed by the Additional District Judge.

11. In the result, the appeals filed by the land-owners are allowed to the extent that they are held entitled to compensation of their acquired land at the rate of Rs. 1,32,000/- per acre, with proportionate costs. They are further held entitled to grant of all statutory benefits of the amended provisions of Sections 23(1-A), 23(2) and 28 of the Act.

12. On request made by the counsel at the Bar, two months" time is granted to the appellants to make up the deficiency, if any, in the court-fee.