

Brij Mohan and Another Vs State of Haryana and Another

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 17, 2004

Acts Referred: Land Acquisition Act, 1894 " Section 18, 23(1A), 23(2), 28, 34

Citation: (2005) 140 PLR 439 : (2005) 2 RCR(Civil) 145

Hon'ble Judges: G.S. Singhvi, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: Sudhir Mittal, Vinod S. Bhardwaj, Ashok Khuber, V.S. Rana, M. Madan Pal, Vikas Chaudhary and Navneet Singh, for the Appellant; Ashok Aggarwal, General and Mukul Aggarwal, for the Respondent

Judgement

Ajay Kumar Mittal, J.

In these appeals filed under Clause X of the Letters Patent, the landlords (hereinafter described "as the claimants")

have prayed for further enhancement of the compensation awarded by the learned Single Judge vide his judgment dated 10.2.1999 passed in

Regular First Appeal No. 1711 of 1994 and other connected appeals.

2. For the sake of convenience, we have taken the facts from L.P.A. 704 of 1999 which arises out of Regular First Appeal No. 742 of 1994.

3. The Government of Haryana, vide notifications dated 8.2.1989 and 7.2.1990 issued under Sections 4 and 6 of the Land Acquisition Act, 1894

(for short, "the Act"), acquired 287.64 acres of land for a public purpose, namely, for development and utilisation of the land as residential and

commercial areas of Sectors 4 and 5, Karnal. This included 3 Bighas 17 Biswas of land belonging to the appellants. The Land Acquisition

Collector assessed the market value of the acquired land at the following rates:-

1) Plain Area Rs. 2,50,000/- per acre

2) Mugal Canal Rs. 1,84,660/- per acre

3) Sewerage Water Nalla Rs. 2,10,796/- per acre

He also awarded solatium at the rate of 30% of the market value and an additional amount at the rate of 12% u/s 23(1-A) and (2) of the Act, The

reference applications filed by the claimants u/s 18 of the Act were disposed of by Additional District, Judge, Karnal vide his award dated

20.12.1993. He determined the market value of the land at a flat rate of Rs. 90/- per square yard. He also declared that the claimants are entitled

to interest at the rate of 9% per annum for the first year and at the rate of 15% thereafter to be calculated from the date of taking possession till the

payment of compensation. It was also ordered that the claimants will be paid additional amount at the rate of 12% on the market value of the land

u/s 23(1-A) of the Act from the date of publication of notification u/s 4 upto the date of the award of the Land Acquisition Collector or the date of

taking possession of the land, whichever was earlier. The Reference Court also awarded solatium at the rate of 30% of the market value u/s 23(1-

A) and (2) of the Act.

4. Feeling dis-satisfied with the award of the Reference Court, the claimants preferred Regular First Appeal No. 742 of 1994 which was disposed

of by the learned Single Judge in terms of judgment dated 10.2.1999 rendered in Regular First Appeal No. 3192 of 1993 - Bindu Garg v. State of

Haryana and Regular First Appeal No. 1711 of 1994 - Raghbir Singh v. State of Haryana. The learned Single Judge after adopting the reasoning

given in Bindu Garg's case (supra) modified the award of the Reference Court, enhanced the compensation of the land acquired from Rs. 90/- per

square yard to Rs. 145/- per square yard, with all statutory benefits provided under Sections 23(1-A), 23(2) and 28 of the Act.

5. Shri Sudhir Mittal, Learned counsel for the appellants argued that the learned Single Judge erred in determining the market value of the acquired

land by considering some of the sale instances ignoring the fact that the prices of the land had become stagnant on account of notification dated

10.9.1971 issued u/s 4(1) of the Punjab Scheduled Roads and Controlled Areas (Restriction on Unregulated Development) Act, 1963, as

applicable to the State of Haryana. He pointed out that as a consequence of the inclusion of the land of the appellants and other claimants in the

controlled area, construction activities were substantially restricted adversely affecting the prices of the land, whereas the prices of the land in the

surrounding areas continued to escalate. Shri Mittal pointed out that even though, the learned Single Judge noticed this fact in Regular First Appeal

No. 3192 of 1993 - Bindu Garg v. State of Haryana, he did not award adequate enhancement. Learned counsel relied on the judgments of the

Supreme Court in Bangaru Narasingha Rao Naidu and Others Vs. Revenue Divisional Officer, Vizianagaram, and The Dollar Company, Madras

Vs. Collector of Madras, and argued that disadvantageously placed land and the one suffering from some disability cannot be taken as the yard-

stick for determination of the market value and that the learned Single Judge should have taken into consideration the prices of the adjacent land

for awarding higher compensation to the claimants - appellants. Shri Mittal and other learned counsel argued that the learned Single Judge

committed serious error by ignoring the sale instances which were duly proved by PW-7 Bal Singh, Clerk of Improvement Trust, Karnal and PW-

9 Yash Pal, who was working as Assistant in Haryana Urban Development Authority. They specifically referred to the sale instance in favour of

Indian Oil Corporation in respect of a plot measuring 8000 square meters located in Sector 16, which, according to the counsel, has not been

taken into consideration for determining the market value of the acquired land. To buttress this submission, learned counsel relied upon

Administrator General of West Bengal Vs. Collector, Varanasi, and Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition

Officer, Visakhapatnam Municipality, and further contended that where it can be shown that the acquired land has immense potential for being

developed into residential and commercial area, sale instances of small and developed plots would be the most relevant and clinching evidence for

determining the market value. The counsel went on submitting that in case the sale instances in respect of developed plots of land are taken into

consideration and an average value is worked out after imposing a cut of 53%, the market value of the acquired land, would come to Rs. 542.65

per square yard. Referring to an award Exhibit P-35 in respect of 0.57 acres of land in regard to which notification u/s 4 was issued on 23.4.1985,

learned counsel submitted that the kind covered by the aforesaid award is only a few yards away from the land acquired in the present case and,

therefore, the said award furnishes best piece of evidence and should have been preferred over the sale instances for determining the market value.

According to the counsel, once it is so done, the appellants are entitled to market value at the rate of Rs. 475/- per square yard.

6. Learned Advocate General, Haryana argued that the enhancement granted by the learned Single Judge is excessive and the appellants are not

entitled to further enhancement. He submitted that the appellants cannot seek determination of the market value on the basis of sale instances, like

Exhibits P-35 and P-67 because the same relate to very small parcels of the land which were adjacent to the bye-pass and had great commercial

value. He further argued that even the instance of sale in respect of land measuring 8000 square meters in respect of Indian Oil Corporation,

located in Sector 16, Kamal is of no help to the appellants as there is no evidence on record to show that developments in Sector 4, Part-i are

similar to those which had taken place in Sector 16 or that Sector 16 is in the proximity of the acquired land. Learned Advocate General relied on

order dated 24.4.2001 passed in L.P.A. No. 458 of 1999 - Col. Shamsheer v. State of Haryana and argued that in view of the dismissal of the

Letters Patent Appeal filed by similarly situated persons, these appeals are liable to be dismissed.

7. We have given serious thought to the respective arguments.

8. Generally speaking, the market value of the land is the price which is willing vendor might reasonably expect to receive from the willing

purchaser. The disinclination on the part of the vendor to part with his land and the urgency of the purchasers to buy are not relevant for the

purpose of determining the market value. The learned Single Judge referred to the evidence produced by the parties including the sale instances

and enhanced the compensation awarded by the Reference Court from Rs. 90/- per square yard to Rs. 145/- per square yard. While determining

the market value of the land, he has taken into consideration the following 7 sale-deeds/awards:

Exh. Date of Area sold Sale price Sale price

No. sale/award acquired (Rs.) per acre

P.2 21.6.1988 10 Biswas 65,000/- 6,24,000/-

P.28 5.10.1988 5 Biswas 36,250/- 6,96,000/-

P.29/67 16.11.1988 124 s.yds. 25,000/- 9,75,000/-

P.30 1.12.1988 2 Biswas 20,000/- 9,60,000/-

P.31 19.12.1988 250 s.yds 40,000/- 7,74,000/-

P.34 22.11.1988 2.5 Biswas 16,250/- 6,24,000/-

P.35 22.3.1988 0.57 Acres 475/- p.s.y. 22,99,000/-

Total 68,52,400/-

Average rate per acre Rs. 9,93,200/-

Rate per square yards Rs. 205 (approximately)

9. The learned Single Judge then applied the cut of 30% on the average price of the sale instances/awards by observing that various parcels of land

referred to by the claimants were not identically situated. In this context, it will be useful to notice the principle laid down by the Supreme Court in

M/s. Printers House Pvt. Ltd. Vs. Mst. Saiyadan (Deceased) by L. Rs., and others, . Paragraphs 8 and 13 of that decision read as under:

8. If "Comparable Sales Method of Valuation of Land" is adopted for determining the market value of an acquired plot of land, it generally holds

good for determination of the market value of several acquired plots of land if acquisition of all such plots of land is made pursuant to the same

preliminary notification. But, if any of the factors, such as, location, shape, size, potentiality or tenure of one plot of acquired land widely differs

from the other plot(s) of acquired land(s), then the market-value of each plot of land acquired has to be determined independently of the other(s)

even if all of them had been acquired pursuant to the same preliminary notification. The reason is not far to seek since the differential factors relating

to different acquired plots greatly affect their value. Hence, if any salient factor of different acquired plots of land, which greatly affects their value is

ignored or is not taken into consideration by the Court while determining the market-value of acquired lands, it will have failed to apply the correct

principle of valuation adoptable in valuation of different types of acquired lands.

13. Thus, when the evidence in the case clearly established that the different plots of lands of three claimants acquired, varied greatly as to their

sizes, shapes and location (situation) they could not have fetched a uniform rate, if the same had been sold in the open market by each of the

claimants. That being the correct position, two learned Judges of the High Court did err on a principle of valuation applicable to valuation of

different types of acquired land, when they by their judgments under present appeals determined the market value of almost all the acquired plots

of lands at a uniform rate, on the wrong assumption that all the 5 plots on acquired lands could have fetched the same rate if sold in the open

market.

In our opinion, the method adopted by the learned Single Judge for determining the market value of the land cannot be faulted. There is no straight

jacket formula which can be applied for imposing the cut on the average market value of the acquired land. In each case, the Court is required to

consider the location, development potentialities of the land and the area to be left out for public amenities. The learned Single Judge has kept in

mind all these ingredients. Therefore, we do not find any valid ground to interfere with his conclusion.

10. The arguments of the learned counsel that the learned Single Judge should have awarded compensation at the rate of Rs. 475/- per square

yard i.e. average price of the land sold vide Exhibit P-35 is wholly meritless. The area of the land sold vide Exhibit P-3.5 was 0.57 acres, whereas

the total acquired land was 287.64 acres. Therefore, the sale instance of such a small parcel of land cannot be made basis for awarding

compensation to the appellants. It is well known that the sale price of a small fraction of land is generally much higher than a large chunk of land. A

buyer will never like to pay the same price for a large chunk which he would be willing to pay for a small piece of land.

11. Shri Sudhir Mittal, learned counsel appearing on behalf of appellants in some of the appeals additionally argued that even if the market value

based on fair price as determined by the learned Single Judge is taken to be the true value of the acquired land, there is an arithmetical error in the

calculation in determining the said rate. He submitted that in Exhibit P-29/67, the value of the land as stated therein was Rs. 30,000/- and not Rs.

25,000/- and thus, the rate per square yard ought to have been determined by taking the value of the land at Rs. 30,000/-. Accordingly to him, if

that is done, the rate per acre would come to Rs. 10,21,195.40 which would result into enhancement of value to Rs. 210.99 per square yard, and

after applying a cut of 30% as has been done by the learned Single Judge, the rate would come to Rs. 147.68 per square yard instead of Rs.

145/- square yard. Learned Advocate General, Haryana could not controvert the submission of Shri Mittal regarding arithmetical error reflected

above in calculating the market value as based on average of the sale instances relied upon by the learned Single Judge. Accordingly, accepting the

submission of Shri Mittal, we find that the appellants are entitled to market value of the land at the rate of Rs. 147.68 per square yard instead of

Rs. 145/- per square yard. On this amount, all other consequential benefits shall also follow.

12. In L.P.A. No. 712 of 1999, another additional argument was raised by the learned counsel for the appellants. He submitted that the learned

Single Judge erred in not awarding interest on the severance charges and valuation of the trees standing on the acquired land. In support of this

argument, he relied on the judgment of the Supreme Court in *Sunder Vs. Union of India*, . Learned Advocate General controverted this argument

and submitted that the claimants are not entitled to anything except the severance charges.

13. We have considered the submissions of the learned Single Judge for the parties. The Apex Court while considering this question, in *Sunder*'s

case (*supra*), held as under:-

The question of payment of interest would arise only when the compensation is not paid or deposited on or before the date of taking possession

of the land. It is inequitable that the person who is deprived of the possession of the land on account of acquisition proceedings is not given the

amount which law demands So be paid to him; and delay thereafter would only be to his detriment. There must be a provision to buffet such

inequity. It is for the purpose of affording relief to the person who is entitled to such compensation when the payment of his money is delayed that

the provision is made in Section 34 of the Land Acquisition Act.

When the Court is of the opinion that the Collector should have awarded a larger sum as compensation the Court has to direct the Collector to pay

interest on such excess amount. The rate of interest is on a par with the rate indicated in Section 34. This is so provided in Section 28 of the Act.

Thus interest has to accrue as per Section 34 and Section 28 of the Act on the compensation awarded, whether it is as per the award initially

passed by the Collector or by the Court later.

In view of the above discussion, we dispose of the appeals in the following terms:-

(1) The appellants shall be entitled to compensation at the rate of Rs. 147.68 per square yard instead of Rs. 145/- per square yard, on this

amount, they shall be entitled to statutory benefits in terms of Sections 23(1-A), (2) and 28 of the Act.

(2) The appellants in L.P.A. No. 712 of 1999 are entitled to interest on severance charges which were not paid in time.

The parties are left to bear their own costs.