

(2004) 04 P&H CK 0017

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular First Appeal No. 768 of 1989

Gurvinder Singh and Others

APPELLANT

Vs

Haryana Tate

RESPONDENT

Date of Decision: April 2, 2004

Acts Referred:

- Land Acquisition Act, 1894 - Section 18, 4, 54

Citation: (2005) 139 PLR 804 : (2004) 2 RCR(Civil) 840

Hon'ble Judges: M.M. Kumar, J

Bench: Single Bench

Advocate: M. L. Sarin and Jai Shree Thakur, for the Appellant; Ashok Aggarwal, A.G. and Amol Rattan, A.A.G., for the Respondent

Final Decision: Allowed

Judgement

M.M. Kumar, J.

This is claimant appellants' appeal filed u/s 54 of the Land Acquisition Act, 1894 (for brevity, the Act) challenging judgment dated 16.1.1989 passed by the learned Additional District Judge, Sirsa on a reference made to him u/s 18 of the Act. The learned Additional District Judge has enhanced the compensation and feeling dis-satisfied, the claimant-appellants have filed the instant appeal praying for further enhancement.

2. Brief facts of the case are that a notification u/s 4 of the Act was issued on 18.9.1984 expressing intention to acquire land for the purposes of widening the link road from Khairpur to Vaidwala. The total area intended to be acquired was 5.13 acres situated in village Khairpur including 11 Marias (332.75 square yards) of land of the claimant appellants. On 26.2.1986, the Land Acquisition Collector passed his award granting compensation of Rs. 30,000/- per acre for Nehri land and Rs. 24,000/- per acre for Gair Mumkin Rasta. The claimants-appellants felt dis-satisfied with the award of the Land Acquisition Collector and sought a reference u/s 18 of

the Act.

3. The learned Additional District Judge vide his impugned judgment dated 16.1.1989 has assessed the market value of Nehri land at the rate of Rs. 90,000/- per acre and that of Gair Mumkin Rasta at Rs. 72,000/- per acre along with statutory benefits. The claimant-appellants have claimed Rs. 650/- per square yard. While disposing of the appeal, the learned Additional District Judge discarded all other evidence and relied upon another order of the Additional District Judge awarding compensation in respect of some other nearby land which was acquired on 28.8.1984, Exhibit P28 and observed as under:-

"The only evidence which can be considered is the order of the Additional District Judge allowing compensation at the rate of Rs. 1,82,000/- and Rs. 1,05,000/- per acre for the land which had been acquired for construction of Sirsa-Barnala road to Dhani Barecha vide notification dated 28.8.84. This land is situated in village Vaidwala at Sirsa-Barnala road. In this case the Land Acquisition Collector had allowed compensation at the rate of Rs. 44,000/- per acre for Chahi land, Rs. 41,600/- per acre for Nehri land and Rs. 25,280/- per acre for Barani land. The amount of compensation was enhanced to Rs. 1,82,000/- and Rs. 1,05,000/- per acre. The land acquired under this notification was much nearer to Sector 19 and 20 and it had more potentiality. However, it cannot be said about the land which has been acquired for widening of the link road Sirsa to Dhani Kashmira Singh i.e. the land for which compensation has to be fixed. In between Sectors 19 and 20 and the present acquired land, there is a major distributory which divided the two and the distance between the acquired land and Sectors 10-20 is not less than 4 kms. Only one karam area adjoins the main road. Therefore, considering all the facts and circumstances, I assess the market value of the acquired land at Rs. 90,000/- per acre for Nehri land and Rs. 72,000/- per acre for Gair Mumkin Rasta. This issue is decided accordingly."

4. Mr. M.L. Sarin, learned counsel for the claimants-appellants has argued that the acquired land is situated within the municipal limits since the year 1975. In support of his submission, the learned counsel has placed reliance on site plans Exhibits P-13 and P-14. In both the site plans, municipal limits have been indicated by yellow and black line and the area acquired is indicated by pink colour which was near G.T.M. Synthetics Limited. The area is situated in close proximity to Sector 18 and actually falls in Khairpur Colony which comprised of residential houses. The learned counsel has pointed out that Mr. Om Parkash, Encroachment Clerk has appeared as PW-2 who has produced on record Exhibit P-9 which is a site plan sanctioned by the Municipal Committee in the year 1977 for constructions of shops on the area which ultimately has been acquired. He has also referred to Exhibits P-8 and P-11 which are again copies of the sanctioned site plans. The learned counsel has maintained that once the site plans for the constructions of shops have been sanctioned by the Municipal Committee then no doubt is left that the acquired land fell within the municipal area. In respect of the land falling within the municipal area, it has to be

presumed that there is a scope for potential development for residential as well as industrial purposes. In support of his submission, the learned counsel has placed reliance on a judgment of this Court in *Shri Lakhmi Dass and Ors. v. The Punjab State and Ors.*, 1977 Punjab Law Journal 464.

5. Mr. Sarin has placed reliance on sale deeds Exhibits P-23, P-24 and P-25. The first sale deed is dated 28.7.1983 vide which 8 Marias (260 square yards) of land is shown to have been sold for Rs. 25,000/-. The rate of the land comes to Rs. 92/- square yard. The second sale deed is dated 9.3.1983 (Exhibit P24) in respect of 5 Marias (160 square yards) of land which has been sold for Rs. 6,000/-. The rate of land per square yard comes to Rs. 59,80P. The third sale deed Exhibit P25 dated 6.4.1983 is in respect of 9 Marias (264 square yards) of land which has been sold for Rs. 20,000/-. The rate of the land comes to Rs. 72.46p per square yard. The learned counsel has argued that the learned Additional District Judge could not have discarded these sale deeds on the ground that the same were in respect of small pieces of land because firstly the total land acquired is nearly 5.13 acres and the land of the claimants-appellants is merely 11 Marias (332.75 square yards). According to the learned counsel, even sale instances of small pieces of land if situated within the municipal limits would be relevant and would furnish adequate guidance to the Reference Court. In support of his submission, the learned counsel has placed reliance on a judgment of Supreme Court in the case of [Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality](#), .

6. It has been further argued that this Court in R.F.A. No. 1707 of 1986 decided on February 10, 1988 has awarded Rs. 120/- per square yard as market value of the land which was acquired for providing approach road to the auto vehicles and commercial market that was to be established in the land belonging to the Wakf Board at Sirsa. Referring to Exhibit P-13, the learned counsel has pointed out that the auto vehicles and commercial market is situated far away beyond the railway crossing. Notification in respect of afore-mentioned land was issued on 20.9.1983 almost one year before the land, in the instant case, was acquired. The learned counsel has argued that even in that case, price at the rate of Rs. 120/- per square was given in respect of the land which goes upto a depth of 200 feet from the Sirsa-Hissar road and at the rate of Rs. 60/- per square yard for the rest of the land. The Additional District judge has then referred to Exhibit P28 and submitted that even the Additional District Judge in the earlier judgment had awarded Rs. 1,80,000/- per acre which is double than the compensation awarded by him in the instant case. The learned counsel has also claimed that the costs of the appeal along with benefits of amended provisions be awarded to the claimant-appellants.

7. The learned State counsel has argued that the Additional District Judge has proceeded on the assumption that the land is not situated within the municipal limits and, therefore, there is no justification to record a finding different than the

one recorded by the learned Additional District Judge. Referring to para No.8 of the judgment, the learned counsel has submitted that the sale instances Exhibits P-16 to P-27 produced by the claimants-appellants pertain to the areas surrounded by the abadi as has been opined by the learned Additional District Judge. It is on that basis that a finding has been recorded with regard to the potential value of the land comprised in sale instances Exhibits P-16 to P-27. The learned counsel then argued that land acquired vide Exhibit P-28 was nearer to Sectors 19 and 20 and as such had more potentiality than the land acquired in the instant case for the purposes of widening the link road. He has drawn my attention to the specific findings recorded by the learned Additional District Judge in para No. 10 showing that in between Sectors 19 and 20 and the land acquired in the present case, there is a major distributory which divided the two and the distance between the acquired land and Sectors 19 and 20 is not less than four kilometers. On the basis of these specific findings, the learned counsel has argued that the assessment of market value made by the learned Additional District Judge is on the higher side and is liable to be reduced.

8. After hearing learned counsel for the parties, I am of the considered view that this appeal deserves to be allowed, the Additional District Judge has discarded the sale deeds Exs.P-23, P-24 and P-25 which should have been taken into account in view of the judgment of the Supreme Court in the case of Bhagwathula Sammana (supra). In the aforementioned judgment, it has been observed that the sale transaction for smaller property can be taken into consideration by applying the deduction of expenses required for development of larger tract and all the relevant facts which are necessary to be considered for arriving at the market value of the acquired land. In the vast area covered by the acquisition, there may be land which is fully developed having all amenities and situated in an advantageous position. If smaller area, within the large tract is already developed and suitable for building purposes and have in its vicinity roads, drainage, electricity and communication etc., then imposition of deductions simply for the reason that it is a part of the larger tract acquired would not be justified.

9. If the situation of the plot belonging to the appellants is considered in the light of the principles laid down by the Supreme Court, then it would become evident that the plot of the land is in close proximity of Sector 18 and falls in Khairpur Colony which is comprised of residential houses. It has been brought on record that the site plans for the construction of shops on the acquired land have been sanctioned by the municipal committee and the same are exhibited as Exs.P-8 and P-11. Therefore, the sale deeds Exs.P-23, P-24 and P-25 would assist the Court in assessing the market value of the acquired land. Ex.P-23 dated 28.7.1983 is in respect of 260 square yards of land which is shown to have been sold for a sum of Rs. 25,000/- and the rate per square yard comes to Rs. 92A. The rate in respect of Ex.P-24 dated 9.3.1983 has been worked out to be Rs. 59.80 per square yard and in respect of Ex. P25 dated 6.4.1983, the rate comes to Rs. 73.46 per square yard. If the price per

square yard is to be taken by average, it comes to Rs. 75/- per square yard.

10. It is also worthwhile to notice that the land has come within the municipal limits of Sirsa town since 1976 i.e. many years before the notice u/s 4 of the Act was issued. In this regard, statement made by PW-2 Om Parkash, Encroachment Clerk is significant which shows that the site plan of the shops proposed to be constructed by the appellants Exs.P-8 and P-11 were sanctioned by the municipal committee in the year 1977. Reliance could also be placed on Exs.P-13 and P14 where the municipal limits have been delineated by yellow and black lines and the land acquired has been indicated by pink colour. Therefore, the learned Additional District Judge has committed an error in law by proceeding on the assumption that the land is agricultural in character and the rates have been awarded on the basis of classification given by the revenue record. A Division Bench of this Court in the case of Lakshmi Doss (supra) has taken the view that once the land is covered by the municipal limits, then the classification of the acquired land according to old revenue record is held to be unwarranted. In fact the extension of the municipal limits would show the potentials of the land to be developed as a residential or commercial area. On that account also the view taken by the learned Additional District Judge is liable to be modified.

11. I am further of the view that the judicial precedents in respect of nearby land in R.F.A. No. 170/- of 1986, decided on 10.2.1988 awarding Rs. 120/- per square yard and Rs. 60/- per square yard on the basis of laning would also be relevant for determining the market value of the acquired land.

12. The above discussion brings out the following facts:

a) the acquired land belonging to the appellants is situated within the municipal limits;

b) the sale deeds Exs.P-23, P-24 and P-25 are relevant for the purposes of determination of market value of the land on the date of issuance of notification u/s 4 of the Act on 18.9.1984;

c) the site has been sanctioned by the Municipal Committee vide Ex.P-8 and P-11 in the year 1977 as well as the situation of the plot would show that it had potentials to be developed as a residential/commercial area:

d) Decision of this Court in R.F.A. No. 1707 of 1986 decided on 10.2.1988 awarding Rs. 120/- per sq. yd. and Rs. 60/- per sq. yd. on the basis of laning would also be relevant for determining the market value of the land as the notification u/s 4 of the Act in the afore-mentioned case was issued on 20.9.1983 almost one year before the notification in respect of the present land.

13. The average value of the land on the basis of Exs.P23, P24 and P25 would come to Rs. 76/- per sq. yd. The acquired land has potential to be used as commercial or residential area and therefore, the yard sticks adopted by this Court in R.F.A. No.

1707 of 1987 would also be relevant where the rate fixed was Rs. 120/- per sq. yd. By taking all the afore-mentioned factors into consideration, it would be fair to assess the market value of the land on the date of issuance of notification u/s 4 of the Act to be Rs. 100/- per sq. yd. Accordingly, it is held that claimant-appellants would be entitled to compensation @ Rs. 100/- per sq. yd. in addition to the statutory benefits. Therefore, the claimant-appellants shall be entitled to solarium @ 30 percent, interest @ 9 percent on the amount enhanced by the Reference Court from the date of taking possession till the date the payment of excess amount. If the payment has not been made one year after the date of taking the possession interest @ 15 percent p.a. for the period beyond one year would be charged. The claimant-appellants shall also be entitled to costs of the appeal.

14. The appeal stands allowed in the above terms.