(2012) 09 P&H CK 0205

High Court Of Punjab And Haryana At Chandigarh

Case No: Cross Objection-96-CI-1994, Regular First Appeal No. 1364 of 1994 (O and M) , Regular First Appeal No. 2200 of 1994 (O and M) and Regular First Appeal No. 133 of 2006 (O and M)

Dharamsala Pukhta	APPELLANT
Vs	
The Punjab State, Industries Department, Chandigarh and Others The Punjab State, Industries Department, Chandigarh and Another Vs Dharamsala Pukhta and Another Shiromani Gurdwara Prabhandak Committee Vs State of Punjab and Others	RESPONDENT

Date of Decision: Sept. 4, 2012

Acts Referred:

- Land Acquisition Act, 1894 - Section 18, 24, 4, 6

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Advocate: V.K. Jain, with Mr. J.L. Malhotra, in RFA No. 1364 of 1994, Mr. P.S. Thiara, in RFA No. 133 of 2006, Mr. Ram Lal Gupta, Addl. AG, Haryana,s in RFA No. 2200 of 1994, for the Appellant; V.K. Jain with Mr. J.L. Malhotra, Advocate, for the respondents in RFA No. 2200 of 1994, Mr. Ram Lal Gupta, Addl. AG, Haryana, for the respondents in RFA Nos.1364 of 1994 and 133 of 2006 and None for the Cross-objector, for the Respondent

Judgement

K. Kannan, J.

Both the appeals filed in the RFA Nos.1364 & 2200 of 1994 have been brought together since they relate to the assessment of compensation through a single notification. RFA No. 133 of 2006, is also directed to be taken up on a representation made by the counsel appearing on behalf of the appellant that RFA No. 133 of 2006 also deals with the property in the same village but brought for acquisition through

a notification issued on a different date on 10.09.1990. The issue of whether the compensation in the first two cases could also be taken as basis for compensation for the case which is the subject matter in RFA No. 133 of 2006, will be considered at the time when the facts are brought out fully. RFA Nos.1364 and 2200 of 1994 relate to acquisition of land through a reference brought by the Collector dated 20.08.1991 in respect of acquisition of 91 kanals 11 marlas of land comprised in khasra Nos.723 to 726, 733 to 736, 743, 744, 746 and 747. The notification u/s 4 had been done on 20.04.1988 and Section 6 declaration had been made on 29.09.1988. The Collector had originally assessed the compensation at Rs. 15,000/-per acre. On the reference made to the Court, the said amount was increased to Rs. 60,000/- per acre, besides interest and solatium provided under the Act. RFA No. 1364 of 1994 is at the instance of the landowner while RFA No. 2200 of 1994 is at the instance of the State. Cross-objections have also been filed in RFA No. 1364 of 1994 at the instance of the beneficiaries of the notification.

2. In RFA No. 1364 of 1994 the landowner seeks for further enhancement of compensation. The landowner was contending that the acquired land abutted the pucca road and was surrounded by industrial and commercial plots on one side and spinning mills and Bharat Heavy Electricals were on the other side. The industrial department itself had been leasing out plots for 90 years @ Rs. 300/- per sq. yard for commercial plots and @ Rs. 250/-per sq. yard for industrial purpose. The landowner/ claimant in LAC No. 53 of 1991 had contended that there was a tubewell in the acquired land and the value had been assessed only at Rs. 18,000/-while the market value of the tubewell would have been not less than Rs. 60,000/-. The acquisition in relation to the land belonged to the same owner was also inclusive of a passage leading to the land thereby leaving the respective property which was not acquired to be without any passage and put to the necessity of disuse.

3. On an objection taken by the respondents that the reference sought at the instance of the landowner was barred by time, the reference Court examined that the award of the Collector had been passed on 10.09.1990 and the application for reference u/s 18 had been made on 15.10.1990. The Court, therefore, found that there was no delay in the reference and found the claim to be made well within time. There had also been a petition regarding the competency of the representative who was purporting to act on behalf of the landowner which was Dharamshala Pukhta. The Court noticed with reference to the jamabandi that the mutation had been sanctioned in favour of Mahant Tarlochan Singh and he was competent to prosecute the case through the power of attorney.

4. As regards the quantum of compensation, the landowner placed and referred to certified copies of the lease deeds Ex.P-3 to Ex.P10 obtained by the Government in relation to the properties in the adjoining areas. Site plan Ex.P-1 was filed to show the location of the property as being in the immediate vicinity of commercial plots already existing. Adverting to the claim made by the landowner that the

compensation for the disputed land must be given on the same basis as a property adjoining it, namely, the Goindwal complex, the Court held that even the property in Goindwal complex had been originally agricultural lands and it was only after the acquisitions, the property in the adjoining Goindwal complex obtained a different user for industrial establishments. The valuation of the property as commercial property would not be appropriate since the property in Goindwal complex was previously only agricultural property. In relation to the property in Goindwal complex, it was brought to the attention of the Court that the Additional District Judge, Amritsar through an award rendered on 11.09.1993 had determined compensation of Rs. 40,000/-per acre. There had been also an earlier award of the same Court, for acquisition, in respect of which, an award had been passed on 06.08.1985 by the reference Court. In both these cases, the acquisition had been of the year 1980 while the acquisition in the instant case was through a notice issued in the year 1988. The Court provided for escalation of price between the years 1980 to 1989 and increased it to Rs. 60,000/-per acre.

5. In the manner of determination of compensation, the potentiality of land is always a relevant issue. If acquisition of properties in the year 1980 in Goindwal complex had obtained conversion of agricultural lands to industrial purposes, the compensation assessed on the basis that they were agricultural lands cannot simply be applied also to properties which were acquired in the year 1988. A projection of potentiality, which may not have been possible at the time when agricultural lands were acquired for the first time in the year 1980, would obtain a different consideration where a property adjoining Goindwal complex was being acquired 8 years later. That surely ought to provide for a different consideration and the valuation of the property in Goindwal complex alone as agricultural lands, cannot be the basis for acquisition of property made later.

6. The learned counsel appearing on behalf of the appellant contends that the Government had actually dispossessed the landowners when they were acquired the property for Goindwal complex and they had, therefore, filed a civil suit for recovery of compensation which was also decreed on 05.09.1986 and appeal filed by the Government was also dismissed. Only, thereafter, Section 4 notification had been issued on 20.04.1988. Exhs.P-3 to P-10 were lease deeds executed in respect of the adjoining lands by the Government, which are tabulated as under:

Ex.	Dated	Extent Sq.Yds.	Lease (in `)
P-3	21/05/87	500	8250
P-4	21/05/87	500	-
P-5	01/06/87	1000	16500
P-6	01/06/87	1000	16500
P-7	01/06/87	500	11875
P-8	01/06/87	500	11875

P-9	21/04/88	242	13310
P-10	21/04/88	242	13310

The lease deeds are for extents of 242 sq. yards to 1000 sq. yards. They have been executed for 100 years commencing from 1987 in Exhs.P-3 to P-8 and for the year 1988 in Exhs.P-9 and P-10. It is difficult to take the average since there is wide variance. For instance Exhs.P-3, P-5 & P-6 stipulate the lease @ Rs. 165/-per sq. yard, Exhs.P-7 & P-8 provide for lease @ Rs. 237.50 per sq. yard. Exhs.P-9 & P-10 stipulated lease @ Rs. 532.50 per sq. yard. It is possible that the plots are not of same value and I do not have the evidence before me as what really constituted the reason for such variations. The premium payable really constituted the consideration for the lease since the stipulation of Rs. 1/-per 1000 sq. yards was merely a manner of declaring that the ownership still resided with the Government and they did not constitute an absolute sale. Since the amounts were for 100 years'' lease, if Stamp law is any basis, I would assume that the value of the lease itself could proximate to the value of the property with the price variations in the range between Rs. 16.50 per sq. yard to Rs. 53.24 per sq. yard. Since the counsel arguing for the appellants were contending that the determination of the compensation in RFA No. 133 of 2006 could itself be taken as valuation in the above cases also, I would proceed to examine in the other case to see whether the evidence adduced in the said case would be sufficient for determination of compensation.

7. The reference is sought at the instance of the SGPC with regard to the lands situated in villages Goindwal Sahib, Akbarpura and Khakh, Tehsil Taran Tarn, District Amritsar. The landowners were relying on three sale instances, out of which one was a sale deed dated 21.12.1981, another in relation to property of sale dated 12.10.1990 and another was in relation to a transaction dated 18.07.1988. The State had placed reliance on sale deeds Exhs.R-1 to R-9 that dealt with transactions of sales in the year 1987-88 in a price band of Rs. 2,442/-at the lowest to Rs. 15,000/-at the highest per acre. The Court observed that the parties to be sale deeds had not been examined by the other side and hence made reference to an award rendered in yet another case titled Labh Singh v. State in which compensation had been assessed at Rs. 1,60,000/-for chahi land, Rs. 80,000/- for barani, Rs. 28,000/- for banjar kadim and Rs. 60,000/-for gair mumkin lands, respectively. The Court observed that the judgment rendered through the award dated 22.02.2005 could itself be taken as the basis. The Court made a reference to the fact that in the award dated 22.02.2005 in Labh Singh''s case (supra) the Court had made reference to sale deed dated 14.07.1988 as the basis for determination of valuation. The Court also observed that in respect of a sale deed dated 22.12.1981 relied on by the landowner, the property transacted was with reference to 3 kanals 5 marlas of land which had been sold for Rs. 48,000/-and the rate worked out to Rs. 1,18,000/-per acre. Considering the fact that Section 4 notification for the land in the instant case was with reference to the year 1988, it provided for an escalation at 12% for every year

for 7 years and held that the additional amount of Rs. 99,120/-had to be added to the valuation found under Ex.P-1. On such a basis, the valuation had been taken as Rs. 2,17,120/-. Since the sale under Ex.P-1 was in respect of 3 kanals 5 marlas of land, the Court held that a deduction to an extent of 25% would be appropriate and found that would result in a determination of Rs. 1,62,720/-rounded off Rs. 1,60,000/-per acre. The Court, therefore, adverted to two modes of determination; one by reference to the award passed on 22.02.2005 in Labh Singh''s case as well as by reference to the sale deed on which the reference Court was relying and by which 3 kanals 5 marlas of land had been dealt with for a price of Rs. 1,18,000/-per acre. A post-notification sale deed dated 12.10.1990 relied on by the owner was discarded but the Court referred to yet another case in Dalbir Singh v. State of Punjab where a compensation had been determined at Rs. 20,000/-per kanal equivalent to Rs. 1,60,000/-per acre. It was on this basis that a compensation had been determined at Rs. 1,60,000/-.

8. When the Court was examining Ex.P-1, it was making a reference to the sale deed of an extent of 3 kanals 5 marlas of land and not to a small piece of land as it had observed. The property which was acquired from SGPC itself was not in respect of any large chunk of land as it had assumed.

9. I find that if the acquisition relating to the properties where the single purpose was for establishing industries, the compensation for all the properties could be assessed uniformly. The manner of assessment in cases where there are several exemplars, the Supreme Court held in Anjani Molu Dessai Vs. State of Goa and Another, ,, the highest exemplar is to be considered. The Supreme Court also recommended in cases where several sales of similar lands whose prices ranged in narrow bandwidth, the average price could be taken but where prices were markedly different, principle of average could not be referred to. The question as to whether the purpose of acquisition is relevant for consideration has come through various decisions but the views expressed may not be seen homogeneus. The attempt will, therefore, be to make a harmonious reading of these judgments. In Atma Singh (died) through LRs. and Others Vs. State of Haryana and Another, , the Court held that this was a reiteration of a principle made earlier in Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others, . In Nelsion Fernandes''s case, the acquisition of property was for railway line and the Court held that there was no need for deduction of development charges and Atma Singh''s case (supra) was again applied in a recent judgment of Supreme Court in Chakas Vs. State of Punjab and Others, where the Court held that the large extent of property acquired for the State''s own industrial purpose of establishing a factory would not require any large percentage of deduction, unlike situation where development charges could be high for setting up common facilities like roads, parks in area etc. Where there was a need for full utilization of the property for industrial use, the deduction could be even as little as 10%. The decision in Atma Singh''s case (supra) was sought to be clarified by the Supreme Court in Subh Ram and Others Vs.

Haryana State and Another, where it held that the purpose for which the land was acquired is not relevant for consideration in terms of the Section 24 of the Land Acquisition Act. The Court was holding so in the context where the property acquired was an agricultural land but the exemplar was in relation to the land which was a developed lay out. The Court held that a deduction as high 75% would be possible.

10. Considering these judgments, it shall be necessary to find out the purpose of acquisition only to examine the percentage of cut that would become necessary. The property that is going to put to a commercial use or industrial use with little scope for setting apart common areas, a small percentage of deduction would be sufficient. Where large amount of development works would require to be undertaken in the property acquired, a larger slice of cut would become necessary. Applying case laws referred to above, I would find in that case after the initial acquisition of property in the year 1980 when an industrial estate was set up, there had been substantially a change of user of agricultural land for industrial purposes. The future development was assured and surely the potentiality of all agricultural lands for transformation of industrial purpose became evident. In such a situation, I would believe that the lease of property given by the State to several industrial establishments for a long period of 99/100 years itself provided the best guide for value of the property. Considering the fact that the properties were leased in the year 1988 @ Rs. 532.50 per sq. yard and the acquisition of property in RFA No. 1364 of 1994 and RFA No. 2200 of 1994 were in relation to the acquisitions about the same on 20.04.1988, I would take the stipulation of lease and find Rs. 532.50 per sq. yard itself as appropriate for determination of compensation. However, considering the fact that the properties were agricultural lands and that they were being used for industrial purpose where there had been already all round development of infrastructure, I would hold that 50% deduction would be appropriate on Rs. 532.50 per sq. yard. It works out to Rs. 266.25 per sq. yard which I would round off to Rs. 265/-per sq. yard. The notification u/s 4 in all the three cases pertained to the same year. Although the determination of compensation has been as per acre to provide uniformity for all the cases, I would take the appropriate valuation shall be in terms of the square yard and hold that for all the properties the compensation shall be @ Rs. 265/-per sq. yard. The awards passed in all the three cases would stand modified and the valuation is enhanced to Rs. 265/-per sq. yard. The addition will attract the benefit of interest and solatium as provided under the amended Land Acquisition Act. The cross-objection is dismissed. All the three appeals are allowed to the above extent.