

(2001) 05 P&H CK 0156

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular First Appeal No. 3018 of 1989

Satpal Chopra

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: May 18, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 14 Rule 5, Order 41 Rule 27
- Land Acquisition Act, 1894 - Section 18, 23, 23(1A), 4, 4(1)

Citation: (2001) 3 RCR(Civil) 638

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: Mr. M.L. Sarin and Mr. Hemant Sarin, for the Appellant; Mr. Surya Kant, A.G. and Mr. Ranjit Saini, for the Respondent

Final Decision: Partly Allowed

Judgement

R.L. Anand, J.

This R.F.A. has been filed by S/Shri Sat Pal Chopra and four others against the State of Haryana and the land Acquisition Collector, and it has been directed against the judgment dated 18.9.1939, passed by the Additional District Judge, Karnal, who, awarded the compensation of the acquired land of the appellant measuring 15 bighas and 1 Biswa at the rate of Rs. 43.87 per square yard. The Reference Court also ordered that appellants shall 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 the notification u/s 4 of the Act upto the date of the award of the Collector or the date of taking possession of the land whichever is earlier. The trial court also held that the appellants will be entitled to solatium at the rate of 30% of the market value besides interest at the rate of 9% on the enhanced amount from the date on which the Collector-took possession of the land to the date of payment of such excess into Court for one year and thereafter at the rate of 15% per annum till the date of payment. The reference Court, however, declined to award compensation with

respect to 5 Biswas of land by holding that this parcel of land is shamilat property and belongs to the Gram Panchayat.

2. Brief facts of the case are that measuring 82.88 acres in village Karnal Hadbast No. 1, Tehsil and District Karnal was acquired by the Haryana Government as per Notification dated 10.2.1983 issued u/s 4 of the Land Acquisition Act for public purposes namely for the development and utilisation of the land as institutional and commercial area to be set up in Sector- 12, in Urban Estate, Karnal under the Haryana Urban Development Authority. Notification u/s 6 of the Act was published in Haryana Govt. Gazette on 8.10.1985. The Land Acquisition Collector rendered the award in respect of the land measuring 82.41 acres. He assessed the market value of the acquired land at the following rates :-

(i) Chahi land @ Rs. 92,000/- per acre.

(ii) Nehri Land @ Rs. 92,000/- per acre.

(iii) Gair Mumkin @ Rs. 40,250/- per acre. In addition, he awarded solatium at the rate of 30% on the market value of the acquired land and additional amount of 12% u/s 23(1-A) of the Act.

3. The appellants were not satisfied with the award of the Collector. They made reference u/s 18 of the Act and claimed the market value of the acquired land at the rate of Rs. 5,000/- per square yard on the basis of the instances enumerated in para No. 6 of the petition as well as damages of Rs. 14,00,000/- on account of harassment and uncertainty created because of the first notification issued by the respondents in May 1973 u/s 4 of the Act, by which their land situated in Sector 13, Urban Estate, Karnal along with present land was acquired by the respondents. The compensation of Rs. 10,000/- for each of the petitioners was claimed on account of loss of the source of livelihood because of the acquisition of the land.

4. Notice of the reference u/s 18 of the Act was given to the respondents - who filed the reply on 9.5.1988 in which they repudiated all the averments of the petitioners-appellants and supported the award of the Land Acquisition Collector.

5. From the controversy raised by the parties, the Reference Court, framed the following issues :-

1. What was the market value of the acquired land on the date of issue of notification u/s 4 of the Land Acquisition Act ? OPP

2. Relief.

The parties led oral as well as documentary evidence in support of their case and the appellants examined as many as 25 witnesses and they also produced several documentary evidence running from Exs.P.1 to Ex. P.42

6. On the contrary, the respondents examined Sat Pal who produced on record the report of Tehsildar (Ex.R.1), recommendation of additional Collector regarding Collector's rate (Ex.R.2) and market rate conveyed by the Collector (Ex.R.3). Further, the respondents placed on record Ex.R.4 the copy of the award of the Land Acquisition Collector.

7. The learned Reference Court for the reasons given in detailed judgment dated 18.9.1989 came to the conclusion that in his opinion the market value of the land on the date of the notification should be Rs. 43.47 per square yard. The appellants are not satisfied with the observation and the opinion of the Reference Court. Hence the present appeal.

8. Before I deal with the submissions of the learned counsel for the appellants, it will be appropriate on my part, if I reproduce the observations of the Reference Court as contained in paras No. 43 and 44 of the judgment in order to find out what prevailed upon the mind of the reference Court in holding that the market value of the land was Rs. 43.87 per square yard. Paras 43 and 44 of the impugned judgment are reproduced as under:-

"43. In fact, the petitioners themselves have proved on record various awards rendered in respect of Sectors 7, 8 and 9 by me as well as the judgments of the Hon'ble Court Ex.P.36 to Ex.P.38 whereby the market value in respect of the land acquired situated in Sector 7, 8 and 9 has been awarded at the rate of Rs. 41/- per square yard. The contention of the learned counsel for the petitioners that he should be awarded 12% per annum increase from May 3, 1983 when notification in respect of Sector 13 was issued as such cannot be accepted because 12% statutory increase came to be recognised only by Act No. 64 of 1984 whereby Section 23(1-A) of the Act has been added. This Legislative mandate cannot be applied in reverse. I have already extracted the observation made in the judgment Ex.P.36 whereby increase of Rs. 8/- has been allowed on the valuation of Rs. 33/- which was assessed as compensation for the land located in Sector 6. As the land located in Sector 12 is opposite to Sector 8 and is intervened by a road only and is further adjacent to Sector 7 and 9 from both the comers of Sector 12 and is comparable to the acquired land, I, therefore, apply the same rule as laid down in judgments Ex.P.36 to Ex.P.38. The notifications in respect of Sectors 7 and 8 were issued on July 5, 1982. The notification in respect of sector 12 was issued on February 10, 1983. The total time lapsed between the two notifications is even months and five days. On exact calculations, the increase in price comes to Rs. 2.87 upto the date of present notification dated February 10, 1983. In case Harbhajan and another v. The State of Haryana through its Collector, Jind 1988 LACC 163 the land subject- matter of the appeal was acquired on August 13, 1979. The Land Acquisition Collector awarded compensation at the rate of Rs. 18,000/- per killa on December 28, 1981. On reference to the Land Acquisition Judge, he assessed the market value at the rate of Rs. 8/- per square yard relying on an earlier award except the land abutting

Jind-Gohana Road. This approach of the learned Additional District Judge was not accepted because by earlier award Ex.P.4 the land situated in the same area was acquired as per notification dated July 11,1980 and the market value of the same was assessed by the Court at Rs. 12/- per square yard, which was affirmed by the Hon"ble Court. *Ramji Lai v. State of Haryana* 1997(4) RCR 697 (P&H) (DB) : RFA No. 778 of 1985. This award was ignored by the learned Additional District Judge on the ground that it pertains to acquisition of land by a notification one year subsequent to the acquisition in that case. The Hon"ble High Court took into account that the market value was determined at the rate of Rs. 8/- per square yard in respect of notification issued on March, 1979 and thus, it was clear that there is rise in the market value of the land between March 1979 and July 1980 to the extent of Rs. 4/- per square yard as evidenced by the Judicial precedence. This rise had taken place in a period of one year and four months. Taking into account that notification subject-matter of acquisition was issued 4 and half months after the one issued in respect of March 1979, the increase at the rate of Re. 1 /- was allowed. This judgment shows that for the period less than one year the Hon"ble High Court has allowed the benefit taking into account the market value determined in the previous awards.

44. I, therefore, keeping in view the totality of the circumstances on record determine the market value of the land of petitioners at the rate of Rs. 43.87 per sq. yard".

9. I have heard Shri M.L. Sarin, Senior Advocate, assisted by Shri Hemant Sarin, appearing on behalf of the appellants and Shri Surya Kant, A.G. assisted by Shri Ranjit Saini, learned counsel, appearing on behalf of the respondents and with their assistance have gone through the record of this case.

10. Before I deal with main appeal itself, I think it appropriate to dispose of the application under Order 41 rule 27 C.P.C. and one more application for framing an additional issue.

11. The first application is CM No. 3106-CI of 1993 through which the appellants want to say that respondents had sold in auction various plots, carved out of the land acquired by the same notification, as the land of the applicants, to the General Public and the price of the plots are mentioned in me application itself.

12. According to the appellant-applicants these transactions of the land put on auction will help the Court for the determination of the market value of the property on the date of the acquisition. I dismiss this application by making the observation that these proposed transactions are with respect to developed area which is done by the authorities after the acquisition of a particular land. Ours is a case of acquisition of big chunk of land measuring 82.88 acres. After the acquisition of the land the scheme is framed with regard to the development of the land and the roads etc. are carved out on the acquired land. Thereafter, the acquired land is

divided into small pieces for various purposes and thereafter small pieces of developed land are put on auction. Thus the rate of the small pieces of land sold by auction would always be higher because several factors have to be added when the reserved price of these types of transactions are worked out by the Department. Therefore, these transactions which have been referred to in the application cannot be said to be comparable transactions. The area of the proposed transactions is only 5 x 5 x 13.75 meters, 8.25 x 38.5 metres and 2.75 x 8.25 metres. These small transactions of the land sold in auction in no way can help me in adjudicating the controversy with regard to the larger area which primarily was an agricultural land.

13. The appellants-applicants also wanted to rely upon an award dated 6.5.1993 given by the Court of Additional District Judge, Karnal with respect to the land acquired for carving out Sector 16. This transaction also cannot be taken into consideration for the simple reasons that the acquisition in that case was of the year 1993 subsequent to the notification of the present case, therefore, this transaction is also excluded from the consideration zone.

14. The counsel for the appellants also relied upon 1993 2 PLR 603 and stated that the auction transactions can be taken note of by the Court from the purpose of determining the compensation. I have already highlighted that the purposed transactions are of very petty area. Even if we apply the theory of deduction still this Court will be handicapped in determining the real market value of the land in question. Moreover, it has been repeatedly held that the additional evidence cannot be led by the parties as a matter of right. I do not require these transactions for the just decision of the case. Thus, I dismiss the application under Order 41 Rule 27 C.P.C.

15. Now, I dispose of CM. No. 4143-CI of 1997, under Order 14 Rule 5 C.P.C. filed by the appellants for framing of additional issue.

16. No proposed issue was ever claimed by the appellants before the trial Court. In these circumstances, I do not want to frame the proposed issue at this stage as the petitioner wants to re-open the entire case and it would amount to de novo trial. Resultantly, this application also stands dismissed.

17. Shri Sarin, learned counsel for the appellants has assailed the judgment of the reference Court by submitting that the transactions which have been relied upon by the appellants have not been taken care of. The Reference Court has mainly relied upon the judgment with regard to the compensation of the acquired land, upon which Sectors 7, 8 and 9 were developed. The counsel submitted that the acquired area ultimately became Sector 12. The potential value of this land was much higher than that of Sectors 7, 8 and 9. The land in question could be utilised for the purpose of commercial activities and institutional purposes. Even the very public purpose mentioned in the notification clearly states that the acquired area has been taken by the Government for the development and utilisation of the land for institutional and

commercial area. It was also submitted by the counsel for the appellants that the land of the appellants is very close to the G.T. Road/by-pass and in these circumstances, the transactions of Sections 7, 8 and 9 cannot be made a comparable piece of evidence. Mr. Sarin also submitted that the land on which Sectors 7, 8 and 9 were developed, were outside the municipal limits whereas the acquired area was within the municipal limits, therefore, the market value of the land acquired should be much higher than that of the land falling in Sectors 7, 8 and 9. Also it was submitted on behalf of the appellants that in the year 1984, the land was acquired on which Sector 16 was developed. The location of Sector 16 is much poor as compared to the location of Sector-12. Mr. Sarin also submitted that in the year 1984, the land was acquired over which Sector 16 was developed. The date of the notification is 22.2.1984. He submitted that in these acquisition proceedings the reference Court awarded compensation at the rate of Rs. 76/- per square yard, and therefore, the moment if this transaction is taken as comparable base, still there is a scope for the enhancement of the compensation. Mr. Sarin also submitted that average price of the transactions proposed by the appellants was Rs. 80/- per square yard and in these circumstances, the decision of the reference court cannot be maintained or sustained. In support of this submission, he relied upon sale transactions Exs.P.2, P. 19 to P.27 and P.30 to P.32.

18. On the contrary, Shri Surya Kant, learned counsel appearing on behalf of the respondents submits that the compensation which has been awarded by the reference Court is already on the higher side and there is no scope of enhancement.

19. I have considered the rival contentions of the parties. The Hon"ble Supreme Court in [Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc.,](#) , held as under :-

"What is fair and reasonable and adequate market value is always a question of fact depending on the evidence adduced, circumstantial evidence, and probabilities arising in each case. The guiding star or the acid test would be whether a hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions prevailing in the open market in the locality in which the acquired lands are situated as on the date of the notification u/s 4(1) of the Act: but not an anxious buyer dealing at arm's length with throw away price, nor facade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value. The judge should sit in the arm chair of the said willing buyer and seek an answer to the question whether in the given set of circumstances as a prudent buyer he would offer the same market value which the Court proposed to fix for the acquired lands in the available market conditions".

20. First of all, I may state that the acquired land runs into 82.88 acres. It is a big chunk of the land and therefore, all small transactions have to be ignored. Before the acquisition, this land was purely agricultural as per the revenue record, though,

it is abutting the G.T. Road. Similarly, the land situated in Sectors 7, 8 and 9 is opposite to this land and only the G.T. Road or the by-pass bifurcates Sectors 7, 8 and 9 and Sector 12.

21. I am not in a position to subscribe to the argument of Shri Sarin that the land of Sector 12, was situated within the municipal limits and therefore, its price must be much higher as compared to the land of Sectors 7, 8 and 9. The object of the Government, of course, was to acquire the land to carve out Sector 12 for institutional and commercial purposes. The land falling under Sectors 7, 8 and 9 was also acquired by the Government. It may be for residential purposes or for other purpose. When some project is created some area has to be carved out for one purpose and some area has to be carved out for the other purpose depending on the situation and location of the land. If the Government thought it proper that in Sector 12 they should built a Mini Secretariat or a Bus Stand or any other institution, it is for the Government to take the decision. Land is not to speak that for what purpose it should be utilised. It is a decision of the Government or the development authority which area suits for which purpose. The primary object of the land falling under Sectors 7, 8 and 9 and Sector 12 was purely agriculture and in these circumstances, I am not in a position to subscribe to the argument of the learned counsel for the appellants that the land of Sector 12 is of a very bigger potential value as compared to the land falling under Sectors, 7, 8 and 9. With regard to the compatibility of Sectors 12 and 16, I am of the opinion that Sector 16 is on higher footing as compared to Sector 12 because the land under Sector 16 adjoins the old town of Karnal whereas the land under Sector 12 is at a considerable distance from the main town itself. Moreover, the date of the acquisition of the land acquired for Sector 16 is subsequent to the acquisition of the land of Sector 12. The notification in our case was made on 10.2.83 and in these circumstances I do not want to take into consideration the award given with respect to the land of Sector 16.

22. Now we have to see whether there is any scope of enhancement with regard to the land in dispute. As I have just stated the present acquisition is dated 10.2.1983. The reference Court had mainly relied upon the judgments Ex.P.36 to 38 wherein the compensation in respect of the land acquired for Sectors 7, 8 and 9 has been awarded at the rate of Rs. 41/- per square yard. The reference Court in the present case has made a marginal increase of Rs. 2.87 per square yard. The land for Sectors 7, 8 and 9 was acquired by the Government on 5.7.1982. We can always take a judicial notice that Karnal town is a galloping town in commercial, institutional as well as residential activities. It is one of the prime towns of Haryana State. Everybody would like to live, slay and expand his business in this city. There are many big commercial activities already going on in this City. There is a difference of 7 months between two notifications. No-one can be meticulous about the compensation because it is always a question of fact and in my opinion, the market value of the acquired area in the present case should be Rs. 46/- per square yard and this I am calculating after giving an allowance with the rising trend of the prices.

23. Now, I would adjudicate whether the appellants are entitled to any compensation with regard to the land measuring 5 biswas forming part of Khasra No. 5982 which is a gair mumkin chah. The reference Court has declined to award any compensation of this land to the appellants for the reasons recorded in para No. 45 of the impugned judgment, which is reproduced as under :-

"The other point which requires decision is with regard to the claim put forth during the trial of the case by the petitioner in respect of land measuring five biswas as their share forming part of Khasra No. 5982 which is a gair mumkin chah. In all twelve biswas of land has been acquired by the State of Haryana as per jamabandi for the year 1984-85, as testified by Sham Lal Patwari (PW 13). He has placed on record application Ex.P.7 marked to him by the Tehsildar and his report is Ex.P.7/A. He has admitted in his cross-examination that no mutation in respect of the land comprised in Sector 12 has been recorded in the revenue record. Shri S.P. Chopra has also claimed compensation in respect of five biswas of land comprised in Khasra No. 5982 in his testimony. The petitioners are not entitled to receive any compensation in respect of five biswas of land for various reasons; firstly, in the claim petition they have nowhere averred that they had any share of five biswas in gair mumkin chah. No doubt on the basis of decree Ex.40, mutation Ex.P.39 has been sanctioned in favour of the petitioners on March 5, 1983, so to say, after the notification u/s 4 of the Act was issued in respect of the acquired land, The rapat roznamcha Ex.P.28 shows the number of the land which has been acquired. Jamabandi Ex.P.29 records the name of Krishna in the column of ownership. From the fact that the land has been recorded as gair mumkin chah shows that the land was left for the use of community and common purpose and obviously that could not revert to the owners".

24. The learned counsel for the appellants-Mr. Sarin submitted that in view of the decree Ex.P.40 the mutation has been sanctioned in favour of the Smt. Krishna Chopra, Ritu Chopra, Naveen Chopra and Mrs. Shally Chopra and resultantly they have become the owners of the property and, therefore, the reference Court has committed an error by stating that this land in fact was a gair mumkin chah and was being used by the community for common purposes and that it could not revert to the owners.

25. I do not subscribe to the reasons of the reference Court when it has given finding with regard to the nature of the property by holding that this land vests in the Gram Panchayat or that it was being utilised by the community for common purposes. The point, whether on the basis of the decree Ex.P.40 the four appellants are entitled to compensation or not, can always be adjudicated by the Civil Court by relating the appellants to file the civil suit for declaration in the Court of competent jurisdiction. I am not in a position to subscribe to the argument of Mr. Sarin that on the basis of the decree Ex.P.40 and on the basis of the mutation Ex.P.39, the compensation with regard to 5 biswas should be given to the appellants. In the

application u/s 18 the appellants have never stated that they are the owners of this Khasra number or that they are entitled to the compensation. There is also no specific issue in this regard.

26. Therefore, I allow this appeal partly by modifying the finding of the reference Court on issue No. 1 and award the compensation at the rate of Rs. 46/- per square yard. The appellants will also 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 the publication of the notification u/s 4 of the Act up to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. They shall also be entitled to solatium at the rate of 30% of the market value besides interest at the rate of 9% on the enhanced amount from the date on which the Collector took possession of the land to the date of payment of such excess into court for one year and thereafter at the rate of 15 per cent per annum till the date of payment. There shall be no order as to costs.

27. Before I part with this judgment, I may also state that the appellants are not entitled to any damages on account of de-notification; firstly because there is no issue in this regard and secondly there is no evidence whether the appellants have suffered any loss or not. Rather the value of the land has increased with the passage of time. There is nothing to suggest that the acquired land remained vacant or was not put to agricultural use by the owners.

28. Appeal partly allowed.