

(2006) 08 P&H CK 0539

High Court Of Punjab And Haryana At Chandigarh

Case No: None

State of Punjab

APPELLANT

Vs

Darshan Singh

RESPONDENT

Date of Decision: Aug. 30, 2006

Acts Referred:

- Land Acquisition Act, 1894 - Section 18, 23, 4

Citation: (2007) 146 PLR 797 : (2007) 2 RCR(Civil) 147

Hon'ble Judges: H.S. Bhalla, J

Bench: Single Bench

Judgement

H.S. Bhalla, J.

In a free country like India, right to own property is a fundamental right given by the Constitution of India and every citizen, as per his desire, can possess movable and immovable property, but at the same time, in the interest of State and General Public, the property of a person can be acquired, but certainly after awarding compensation to him and this is the spirit of law, which spells out from the Land Acquisition Act, 1894 (for short as "the Act").

2. By this common judgment, I shall be disposing of two appeals, being R.F.A. Nos. 2792 of 1987 filed by the State of Punjab praying for setting aside the award dated 3.9.1987 passed by Additional District Judge, Sangrur and 2810 of 1987 filed by the appellant-complaint for enhancement of compensation. Since they arise out of the same impugned award dated 3.9.1987 passed by Additional District Judge, Sangrur and are being heard together. However, for the sake of convenience, facts are being extracted from R.F.A. No. 2792 of 1987.

3. The facts required for the disposal of this appeal are that in pursuance of notification u/s 4 of the Act dated 10.7.1981 the Punjab Government decided to acquire land situated in Village Gaunspura, Tehsil Malerkotla, district Sangrur for the manufacture of Fatty Acid and Glycerin at Village Gaunspura. The Collector assessed

the value of the acquired land at Rs. 53,926/- per acre. It has been alleged in the petition that the land belonging to Darshan Singh claimant was also acquired along with the other land. Feeling dissatisfied with the Collector's award, Darshan Singh filed an application u/s 18 of the Act claiming for enhancement of compensation. It is alleged in the petition that the price of the land prevailing in the locality at the time when the acquisition was made was Rs. 50,000/- per bigha. The land is situated on a metalled road and has great potential for residential as well as for industrial purposes. The town of Malerkotla is developing into industrial town and the entire construction is being raised on all sides of the acquired land and development has also been made towards the land of the claimant. The respondent landowner has prayed for enhancement of compensation. Hence, this petition.

4. On the other hand, reply was filed by the respondent-State controverting all the pleas taken up by the claimant in his appeal reasserting that the value of the acquired land assessed by the Collector is correct and no further enhancement is required. It has also been maintained in the written statement that the acquired land is purely agricultural land and does not possess any specific potentiality for residential or commercial purpose. The appellant-State has prayed for dismissal of the petition.

5. The learned Additional District Judge, Sangrur, after framing necessary issues and assessment of the evidence on record, awarded compensation to the claimant, the operative part of the award dated 3.9.1987 is reproduced as under:

As a result of my findings on issue Nos. 1 and 2, petitioner Darshan Singh is awarded compensation at the rate of Rs. 60,000/- per acre along with solatium at the rate of 30% on the enhanced amount of compensation. He shall also be entitled to claim interest on the enhanced amount of compensation at the rate of 9% per annum for one year from the date of taking possession, i.e. (17.5.1982) and at the rate of 15% per annum thereafter till payment is made. In addition to the market value of the land, the petitioner shall also be entitled to claim 12% per annum thereafter till payment is made. In addition to the market value of the land, the petitioner shall also be entitled to claim 12% per annum on the market value for the period from the date of the publication of a notification (10.7.1981) to the date of award (17.5.1982) u/s 23(1-A) of the Land Acquisition Act, 1894, Memo of costs be prepared. File be consigned to the record room.

The landowner, being dissatisfied with the award, has knocked the door of the Court for further enhancement of the amount of compensation of the acquired land. The State has also prayed for setting aside the award passed by Additional District Judge, Sangrur.

6. I have heard the learned Counsel for the parties and have also gone through the record of the case.

7. Before I proceed in the controversy involved in the present appeal, I would like to highlight the factors on the basis of which the parameter for enhancement of compensation can be assessed. It is no doubt that each and every case has its own facts and circumstances and has to be examined on the basis of material available on the record. Valuation of immovable property is not a science and that valuation cannot be made by merely applying algebraic formulae for it quite often abounds in uncertainties and imponderable and therefore, no exact reasons for the conclusion arrived at is possible on all occasions. Some room has to be allowed for conjectures and guess work, though the Court should be reluctant to venture too far in that direction because there is a danger of being misled in the decision making. The Court while determining the market value should take into consideration the evidence adduced as to the nature, situation, income and potential value of the land. The Apex Court in a catena of decisions over the past four and half decades and more have evolved principles and norms for determination of compensation of the lands compulsorily acquired by the State in the exercise of its eminent domain power under the Act or under any other enabling statute. One of the principles discernible from the pronouncements of the Apex Court is that while determining compensation for larger extent of land, price paid for or compensation determined by the Court for smaller parcels of land does not provide a safe and dependable base. At the same time, it is also discernible from the pronouncement of the Supreme Court that in the absence of any better evidence, even transactions involving conveyance of smaller extents of land or blocks of land which are comparable in terms of point of time and the locus would become relevant.

8. Now keeping in view the aforementioned parameters, the present case has to be examined minutely on the basis of evidence led by the parties. In order to determine the value of the acquired land, Baljit Singh Patwari Halqa stepped into the witness box as PW-1 and deposed that the possession of the acquired land was taken by the State vide rapat roznamcha No. 358 dated 17.5.1982, a copy of which is Ex.P-16. Claimant himself stepped into the written box as PW-3 and deposed that he purchased the acquired land for setting up his industry for polythene bags and this land was purchased about 1-1/2 years prior to the acquisition of the land. He further deposed that the market value of the land was Rs. 30/- per square yard. On account of the acquisition of the land, he has to drop his plan for setting up his industry. He has further deposed that around the acquired land, factories are being set up and the land is situated on the Ludhiana - Malerkotla road, which is National Highway. The learned Additional District Judge, while deciding issue Nos. 1 and 2, has held that the land of the claimant also adjoins the main Ludhiana-Malerkotla road and it is in a better position than the land of Khasra No. 104. The learned Additional District Judge has not taken into consideration the certified copies of the sale-deeds Ex.P-1 to P-12 and copies of judgments Ex.P-13 and P-14 placed on the record by holding that the sale deeds of the land vide which they were sold, relate to small plots of land adjacent to the main Ludhiana-Malerkotla metalled road and the price

at which these plots of land were purchased cannot be made the basis of assessing the market value of the acquired land, inasmuch as, the area which has been acquired is much bigger in size measuring about 100 bighas. The observation made by the District Judge, does not seem justifiable keeping in view the fact that the acquired land just adjoins the main Ludhiana-Malerkotla road which is a National Highway and has a great potentiality for being used as residential as well as for industrial purposes and the land sold, though in small size by the other landowners, to my mind, does not mean to deprive the landowner of a reasonable price of this land, which is being acquired for the welfare of the public.

9. From the unrebutted testimony of the claimant and his witness, it is apparent that the acquired land has a potential for being used as residential, commercial and industrial purposes and on account of this, it should not have been treated to be a purely agricultural land. To my mind, though it may not be possible to grant increase at the rate which is being prayed for by the landowners yet some increase in compensation is called for keeping in view the fact that the land was acquired in the year 1982. Keeping in view the facts and circumstances spelled out from the evidence available on record, I find that a lot of construction had come up near the land acquired and on this ground, the acquired land had also gained potential for urbanization and once urbanization has come on and the acquired land has gone potential for the purpose, it will be wholly wrong to classify the land on the agricultural quality.

10. To my mind, the prices fetched for similar lands with similar advantages and potentialities under bona fide transactions of sale at or about the time of the preliminary notification are the usual, and indeed the best, evidences of market value. In the instant case, it is clear that the land acquired has a potentiality for urban use and is meant for the manufacture of Fatty Acid and Glycerin at Village Gaunsupura, Tehsil Malerkotla, District Sangrur. What is fair and just or reasonable market value is always a question of fact depending on the nature of the evidence, circumstances and probabilities in each case. All its existing advantages and its potential possibilities when laid doubt in a most advantageous manner should be taken into consideration while fixing the market value. The Court can also take into account any special circumstances, apart from the methods of valuation traditionally adopted, in order to arrive, as nearly as may be, at an estimate of the market value. The Court's attempt should always be to adequately and reasonably compensate the loss sustained by a person as a consequence of compulsory acquisition of his property by the State by invoking its eminent domain power and the person who is deprived of his land is entitled to be compensated to the full value of the deprivation caused.

11. Keeping in view the evidence available on record, it is quite clear that the acquired land, as on the date of acquisition itself had tremendous non-agricultural potentiality because the whole area abutting on all four sides of the acquired land

was being used for non-agricultural purposes. Apart from high non-agricultural potentiality possessed by the acquired lands the same is also situated within the Municipal Limits. As per the stand of the State, the land in dispute was an ordinary agricultural land. It is settled law what where land acquired under the Act falls within the vicinity of a particular town it should be evaluated as an urban property even if the property at the time of acquisition is used as agricultural property. In the instant case, the Collector and the Tribunal had evaluated agricultural property acquired by the standards of agricultural property and not by the standards of urban property. Thus, it was a patent error on the face of the record and the same is required to be corrected by this Court by awarding some enhancement and in view of this, to my mind, keeping in view the facts and circumstances of the case and the location of the acquired land, as discussed above, compensation at the rate of Rs. 75,000/- per acre would meet the ends of justice and I order accordingly. The landowner will also be entitled to all the statutory benefits as awarded by the Additional District Judge, Sangrur.

12. For the reasons recorded above, appeal, being R.F.A. No. 2870 of 1987 filed by the appellant landowner is partly allowed by enhancing the amount of compensation to Rs. 75,000/- per acre instead of Rs. 60,000/-per acre awarded by the Additional District Judge, Sangrur. Appeal, being R.F.A. No. 2792 of 1987 filed by the State is hereby dismissed. The landowner is directed to pay the court-fee, if not paid earlier, on the enhanced amount of compensation within three months from today to claim the enhanced amount of compensation.