(2004) 03 P&H CK 0081

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 944 of 1990 with Regular First Appeal No. 1826 of 1990

Amarjit Kaur and others APPELLANT

Vs

Punjab State Electricity Board, Patiala and others RESPONDENT

Date of Decision : 10-03-2004

Acts Referred:

Citation : (2004) 2 CurLJ 273 : (2004) 2 LJR 698 : (2004) 2 RCR(Civil) 590

Hon'ble Judges : Viney Mittal, J

Advocate : Sh. Sarwan Singh, Senior Advocate with Sh. R.L Gupta, Advocate. Sh. H.S. Toor, Senior Advocate with Sh. Gurminder Jit Singh, Advocate., Advocates for appearing Parties

Judgement

Viney Mittal, J. (Oral)

1. This order shall disposed of two appeals being RFA Nos. 944 and 1826 of 1990.

2. Vide notification dated January 15, 1985 issued under Section 4 of the Land Acquisition Act, the land situated in Village Bhul Chak, Tehsil Pathankot, District Gurdaspur, was acquired by the State for a public purpose at public expense namely, for the construction of a power house. Vide award dated September 11, 1985, the learned Land Acquisition Collector assessed the market value of the acquired land by classifying the same into two categories. The Nehri land was assessed @ Rs. 10,280/ per acre, whereas the Barani land was assessed @ Rs. 10,000/ per acre. There were certain trees also standing in the acquired land. The trees were also assessed.

3. The claimants land owners felt dissatisfied and claimed a reference. The matter was accordingly referred under Section 18 of the Land Acquisition Act.

4. During the course of reference proceedings, the parties led their evidence. Besides the oral evidence, the land owners also relied upon the sale deeds Exhibits A5, A6, A7 and A8 and copies of the Khasra Girdawaris as Exhibits A9, A10 and A11. Copies of jamabandis were produced as Exhibits A12 and A13.

5. On the other hand, the State of Punjab produced Kulwinder Singh, Patwari as RW1 who produced a layout plan Exhibit R1 of village Bhul Chak. He also produced the sketch of extract of Aks Shajra of village Khadawar as Exhibit R2. Various sale instances as Exhibits R3 to R7 were also produced.

6. The learned Additional District Judge held that the land in question was primarily an agricultural land and had not been used for any other purpose. Various sale instances relied upon by the claimant land owners were not relied upon by the learned Additional District Judge. It was held that the aforesaid sale instances pertained to small pieces of land and as such could not be relied upon. On the other hand reliance was placed upon various sale instances produced by the State. Mainly the market value was determined by the learned Additional District Judge on the basis of Exhibit R5 which is sale deed dated March 15, 1984 pertaining to 15 kanals and 3 marlas of land for a sale consideration of Rs. 13,201.32 per acre. The aforesaid sale instance pertained to the land in village Khadawar. On the basis of the aforesaid sale instance, it was held by the learned Additional District Judge that the claimants were entitled to an increase of 12% per year because of the fact that there was a gap in the date of notification and the date of sale. On that basis, the acquired land was assessed @ Rs. 16,000/ per acre uniformly.

7. With regard to the claim of the land owners pertaining to the trees, the learned reference Court relied upon the formula adopted by the Department of Horticulture on May 15, 1985 with regard to the fruit bearing trees. On that basis, it was held that the claimants would be entitled to the market value of the fruit bearing trees on the basis of the aforesaid formula. The claim of the land owners with regard to nonfruit bearing trees was however, rejected holding that the claimants had not led any evidence showing that they were entitled to any further enhancement.

8. The claimant land owners have now felt aggrieved and have approached this Court through the present appeals.

9. I have heard Sarvshri Sarwan Singh, learned senior counsel and R.L. Gupta, learned counsel appearing for the appellants and Sh. H.S. Toor, learned senior counsel appearing for the respondents and with their assistance have also gone through the record of the case.

10. Learned counsel for the appellants primarily challenged the findings recorded by the learned Additional District Judge with regard to the potentiality of the land and also the rejection of the evidence produced by the claimants. It has been argued by the learned counsel that in fact the evidence on the record including the site plan Exhibit A1 produced by the claimants, clearly shows that the land in question had the potentiality for being used for industrial as well as the nonagricultural purpose. It has been further maintained by the learned counsel for the claimants that the learned Additional District Judge has committed an error in ruling out the sale instances produced by the claimants, inasmuch as the

aforesaid sale instances pertained to village Bhul Chak, whereas the sale instances relied upon by the learned Additional District Judge and produced by the respondents merely pertained to village Khadawar.

11. Sh. Sarwan Singh, learned senior counsel for the appellants has drawn my specific attention to the sale instance Exhibit A6. The aforesaid sale instance pertains to the sale of 2 kanals of land in village Bhul Chak, whereby on December 18, 1984 two kanals of land was sold for a sale consideration of Rs. 14,000/, thus reflecting an average price of Rs. 56,000/ per acre. According to the learned counsel, although the sale instance pertained to a small piece of land but for determining the value of the acquired land a reasonable cut could have been imposed.

12. On the other hand, Sh. H.S. Toor, learned senior course appearing for the respondents has argued that the assessment made by learned Additional District Judge was wholly keeping in view the facts and circumstances of the case and there was no scope of further enhancement. The learned counsel has argued that in fact since there was no evidence with regard to large transactions produced by the claimants, therefore, the respondents had produced the sale instances pertaining to village Khadawar and the same had been duly taken note of by the learned Additional District Judge.

13. I have give my thoughtful consideration to the rival contentions raised on behalf of learned counsel for the parties.

14. Firstly, to determine as to whether the acquired land was to be taken only as an agricultural land or whether it could be held that the same had the potentiality for being used for nonagricultural and industrial purpose as well, the claimants have appeared themselves. Dharam Singh has appeared as AW4. He has deposed that he was himself running a saw mill, a chakki, cotton ginning machine, near the acquired land and there are 56 similar industrial units nearby. The aforesaid witness has further deposed that there is a school, a hospital, a veterinary hospital and a few shops near the acquired land. According to the aforesaid witness the market value of the acquired land was about Rs. 25003000/ per marla. The said witness has also pointed out that the National Highway i.e. AmritsarJammu road is only one killa away from the acquired land.

15. Similar is the statement of Ajit Singh AW5.

AW6 Darshan Singh, while claiming that the market value of the acquired land was Rs. 1 lac 1,25,000/ per acre at the time of acquisition, has stated that there is a poultry farm, a petrol pump, a site for steel plant, Saw mills, Atta Chakki, a school, a dispensary near the acquired land.

16. Besides this, the claimants have produced on record a site plan Exhibit A1. A perusal of the aforesaid site plan Exhibit A1 clearly shows that there is a High School, known as Jyot High School, which is 150 yards away from the acquired land. The Health Sub Centre was situated at a distance of 50 yards, the

veterinary hospital was situated at a distance of 100 yards, the Government Middle School was situated at a distance of 90 yard, the post office was situated at a distance of 150 yards from the acquired land. The acquired land also was very near to the abadi of village Bhul Chak. This evidence produced by the claimants remains unrebutted by the respondents. The factum of the existence of the aforesaid buildings and other establishments has not been disputed by the respondents, while producing their evidence.

17. On the basis of the aforesaid facts, it is apparent that the learned Additional District Judge has clearly erred in holding that the acquired land was to be treated as purely agricultural land and as such the same was liable to be assessed on that basis.

18. In my opinion the acquired land could not be treated to be merely an agricultural land but the same had the potentialities for being used for non agricultural and industrial purposes.

19. Once it is clear that the acquired land had the potentialities for being used for nonagricultural and industrial purposes, then the market value of the acquired land has to be assessed on that basis.

20. The respondents have not produced any evidence pertaining to any sale transaction with regard to any land in village Bhul Chak. All the sale instances relied upon by the respondents pertained to village Khadwar.

21. On the other hand, the claimants have produced on the record various sale instances, such as Exhibits A5, A6, A7 and A8. Although Exhibit A5 pertains to sale of 3 kanals 10 marlas of land but the aforesaid land was situated in village Ghoh. Accordingly, the sale instance had rightly been not relied upon by the learned Additional District Judge. However, the sale instances Exhibit A6 dated December 18, 1984 pertains to sale of 2 kanals of the land for Rs. 14,000/. The aforesaid land was situated in village Bhul Chak. The proximity of the date of sale to the notification issued under Section 4 is apparent. The sale was effected on December 18, 1984 whereas the notification under Section 4 in the present case has been issued on January 15, 1985. Although, the aforesaid sale instance pertains to merely 2 kanals of land, but that fact by itself cannot be taken to mean that the sale instance was liable to the rejected. It is well settled that if there are certain sale instances pertaining to smaller plots/pieces of land, then while determining the market value of the acquired land, the Courts could always take into consideration the aforesaid sale consideration by applying as reasonable cut.

22. The Hon''ble Supreme Court of India in the case of Smt. Kaushalya Devi Bogra and others v. Land Acquisition Officer, AIR 1984 S.C. 892 has held that in case of acquisition of large tracts, the transactions in respect of small properties do not offer a proper guideline, therefore, for determining the market value of large tract on the basis of a sale transaction for similar property, a deduction should be made. It was held as follows :

"When large tracts are acquired, the transactions in respect of small properties do not offer a proper guideline. Therefore, the valuation in transactions in regard to smaller property is not taken as a real basis for determining the compensation for larger tracts of property. For determining the market value of a larger property on the basis of a sale transaction for smaller property a deduction should be given."

23. This Court had also occasion to deal with a similar question relating to the determination of the market value of the acquired land on the basis of the evidence of the sale transaction pertaining to the small pieces of land in Anand Sarup v. State of Punjab and another, 1988(1) RRR 448 (P&H) : 1988 PLJ 366 and it was held as follows :

"..........No doubt, the above sale transactions being of small pieces of land, comparatively higher consideration would have been paid of the same. However, it is by now well settled that where no evidence of sale of larger pieces of land or of area comparable with the area of land acquired is available the sale transactions of smaller pieces of land can be taken into consideration and a reasonable cut is to be imposed on the consideration represented by them, so as to arrive at the market value of the acquired land. It has also been held that reasonable cut in the circumstances which is to be imposed is 1/3rd of the consideration represented by such sale transactions. Thus, when 1/3rd cut is imposed on the average sale price of Rs. 1,62,402/ per acre, it would be found that the market value of the acquired land works to Rs. 1,08,268/."

In a recent judgment, the Hon''ble Supreme Court of India in the case of Ravinder Narain and another v. Union of India, 2003(2) RCR(Civil) 212 (SC) : 2003(3) PLR 262 has held as follows :

"7. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example where there is no other material it may in appropriate cases be open to the adjudicating court to make comparison of the prices for small plots of land. However, in such cases necessary reductions/adjustments have to be made while determining the prices."

24. Thus keeping in view the authoritative pronouncements by the Apex court and law laid down by this Court, I have no hesitation in relying upon the sale instance Exhibit A6 produced by the claimant land owner. However, since the aforesaid sale instance pertained to a small piece of land, therefore, keeping in view the law laid down by the Apex Court in Ravinder Narain''s case (supra), I find that 1/3rd cut needs to be applied to the aforesaid average price for determining the market value of the acquired land. The average price reflected by Exhibit A6 comes out to Es. 56,000/ per acre. After applying the 1/3rd cut to the aforesaid land can be assessed at Rs. 36,000/ per acre. Thus, I consider that the market value of the acquired land @ Rs. 36,000/ per acre would be just and proper compensation.

25. It has also been argued by the learned counsel for the appellants that the assessment made by the learned Additional District Judge with regard to valuation of the trees was also erroneous and the claimants were also entitled to further enhancement.

26. However, I find my self unable to agree with the aforesaid contention of learned counsel for the appellants. For the assessment of fruit bearing trees the learned Additional District Judge has himself adopted the formula dated May 15, 1985 adopted by the Department of Horticulture, Punjab, Chandigarh. Nothing has been shown that the aforesaid assessment made by learned Additional District Judge, with regard to the trees, is erroneous in any manner. Accordingly, the claim of enhancement, with regard to trees, made by the claimants is rejected.

27. In view of the aforesaid discussion, it is held that the claimant land owners would be entitled to the market value of Rs. 36,000/ per acre with regard to the acquired land. Additionally, the claimants land owners would also be entitled to the statutory benefits as admissible to them in accordance with the amended provisions of the act.

There shall be no order, as to costs.