(1988) 01 P&H CK 0079

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1963 of 1985

Anand Sarup APPELLANT

Vs

State of Punjab and anr. RESPONDENT

Date of Decision : 12-01-1988

Acts Referred:

Citation : (1988) 1 ILR (P&H) 332 : (1988) PLJ 366 : (1988) 1 RRR 448

Hon'ble Judges : D.V.Gupta, J

Advocate : Mr. Arun Walia, Advocate, Mr. Harbhagwan Singh, Sr. Advocate, Advocates for appearing Parties

Judgement

D.V. Sehgal, J.—This judgment will dispose of C.W.Ps Nos 1962 and 2148 of 1985 filed by the land owners, and 2895 and 2896 of 1985 filed by the Improvement Trust, Sangrur. All these Writ petitions are directed against the award dated 24.12.1984 made by the President, Tribunal, Improvement Trust, Sangrur (for short, the Tribunal''). While the former petitions have been filed by the land owners. The latter have been instituted by the Sangrur Improvement Trust, Sangrur (for short `the Trust'').

2. Land measuring 9.81 acres outside Patiala gate within the municipal limits of Sangrur was acquired for implementation of development scheme known as "CommercialcumResidential Scheme" which was published on 28.1.1978 by a notice under Section 36 of the Punjab Town Improvement Act, 1922 (for short `the Act''). The Collector made his award dated 10.9.1979 determining the market value of the acquired land at Rs. 53,000/ per acre. The land owners being not satisfied with the same applied for references to the Tribunal under Sections 54 of the Act, which have been decided by the learned Tribunal through the impugned award Annexure P.2. It has determined the market value of the acquired land at Rs. 96,000/ per acre. The landowners as well as the Trust are aggrieved against the market value so determined and that is why they have filed the present writ petitions.

3. I have heard the learned counsel for the parties. The first submission made by

the learned counsel for the land owners is that mutations of sale Exs. R.2, R.3, R.4 and R.7 adduced in evidenced the trust were inadmissible as they do not constitute evidence of sale consideration paid in respect of the sales which are represented by these mutations. In support of this submission, he relies on The State of Punjab v. Pohu and another, 1985 P.L.J. 583. It has been authoritatively held therein by Full Bench of this Court that mutation of a sale is neither primary nor secondary evidence of terms conditions of sale. It is, therefore, not admissible apart from the factum of sale to prove any of the terms and conditions of the contract including the sale consideration. This consitention of the learned counsel for the landowners is unassailable and could not be resisted by the learned counsel for the Trust. I, therefore, hold that these mutations being inadmissible in evidence, the learned Tribunal fell in error in taking the same into consideration for determining the market value of the acquired land.

4. The next submission of the learned counsel for the landowners is that certified copies of the sale deeds representing the following sale transactions were produced in evidence by the landowners but these pieces of evidence have been discarded by the learned Tribunal on the ground that they represent sale of small plots of land :

Sr. No.

Exhibit

Date of Sale

Area sold

Price paid

Price per acre

K M

1.

P.1

26.4.78

112

29,950/

1,19,975/

Kh. No. 886

2.

P.3

16.12.77

110

37,000/

1,97,333/

Kh. No. 925

3.

P.4

16.12.77

013

14,000/

1,72,300/

Kh. No. 925

4.

P.5

19.8.77

04

4,000/

1,60,000/

Kh. No. 813

5. The average market value worked out on the basis of the aforesaid transactions is Rs. 1.62,402/. He submits that in view of the fact that there was no other evidence whatsoever on the record as regards the market value of the acquired land on the relevant date, the learned Tribunal could not rule out of consideration the above sale transactions. I find force in this submission. The learned Tribunal has fixed the market value of the acquired land at Rs. 96,000/ per acre but while doing so has not based its conclusion on any evidence whatsoever. No doubt, the above sale transactions being of small pieces of land, comparatively higher consideration would have been paid for 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 it 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 out to Rs. 1,08,268/.

6. Another submission made by the landowners is that the District Collector had vide his Memo No. 60 dated 3.1.1979 informed the Land Acquisition Collector that the average price of the land acquired in the area is Rs. 1,17,440/ per acre. Reference to this letter is specifically made by the Land Acquisition Collector in his award Annexure P.1. The learned counsel submits that this letter of the District Collector was a part of the file before the Tribunal. It ought to have been taken into consideration by it but no reference to it finds place in the impugned award. It could not be disputed before me that this was again a relevant piece of evidence which has been wrongly omitted to be considered by the learned Tribunal. I do not, however, find it safe as urged by the learned counsel for the landowners to solely rely on this Memo of the District Collector and fix the market value of the acquired land at Rs. 1,17,440/ per acre.

7. At the same time it is clear that the impugned award of the Tribunal suffers from errors of law on the face of it. It has taken into account pieces of evidence which were inadmissible in law and has instead ommitted to consider important circumstances of evidence brought on the record. I, therefore, find it imperative for me to interfere with the finding recorded by the learned Tribunal in the exercise of extraordinary jurisdiction under Article 226 of the Constitution. Keeping in view the relevant evidence which was before the Tribunal and has now been discussed above I find it appropriate to fix the market value of the land acquired at Rs. 1,10,000/ per acre. At the same time, the contention of the learned counsel for the Trust that the market value of the land fixed by the Tribunal is excessive could not at all be sustained by him by any valid submission.

8. Another contention raised by the learned counsel for the landowners is that in spite of the fact that the impugned award was made on 24.12.1984 by which date Central Act No. 68 of 1984 amending the provisions of the Land Acquisition Act, 1894, had been brought into force, the learned Tribunal has not granted the statutory benefit of solatium, an additional amount and interest on the basis of the aforesaid amended provisions. This contention appears to be quite valid and could not be assailed by the learned counsel for the Trust.

9. As a result, I allow Writ Petition Nos. 1963 and 2148 of 1985 filed by the landowners with costs and quashing the market value determined in the impugned award of the Tribunal, Annexure P. 2, direct that the landowners are entitled to payment of compensation for the acquired land at the rate of Rs. 1.10,000/ per acre. They shall also be entitled to solatium at the rate of 30% of such market value, an additional amount under section 23(1A) of the Land Acquisition Act at the rate of 12% per annum on this market value from 28.1.1978, i.e. the date of publication of the notice under section 36 of the Act, till the date of the award of the Collector, i.e. 10.9.1979. They shall also be entitled to payment of interest at the rate of 9% per annum for a period of one year from the date of their dispossession from the land acquired and at the rate of 15% for the period subsequent thereto till the payment of the entire amount

of compensation to them.

10. C.W.Ps Nos. 2895 and 2896 and 1985 filed by the Trust are, however, dismissed leaving the parties to bear their own costs.

Order accordingly

