
(1996) 09 SHI CK 0031
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 562 of 1995

Associated Cement Company Ltd. Gagal Cement Works	APPELLANT
Vs	
State of H.P. and Another	RESPONDENT

Date of Decision : 10-09-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 18

Citation : (1997) 1 ShimLC 292

Hon'ble Judges : M. Srinivasan, C.J.; Kamlesh Sharma, J

Bench : Division Bench

Advocate : K.D. Sood, for the Appellant; Indar Singh, General for Respondents No. 1 and 2, G.D. Verma, for Respondents No. 3 to 22 and Nemo for Respondents No. 3 to 47, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—The Petitioner Company is aggrieved by the award passed by the Land Acquisition Collector (Industries) District Bilaspur on 29-4-1996. In short, the complaint of the Petitioner Company is that the compensation fixed by the award is arbitrary and excessive and the award has failed to take into consideration all the relevant materials. It is also stated by the Petitioner that the price has been fixed on imaginary basis. The further contention of the Petitioner is that it had no notice whatever at the stage when the evidence was recorded by the Land Acquisition Collector for fixing the price of the land.

2. None of the contentions of the Petitioner is sustainable in view of the materials placed before us. We find from the records that the Petitioner has had not only notice of the proceedings but also produced evidence before the Land Acquisition Collector. Even in the petition in Para 2, it is admitted as follows:

The Petitioner company.....also led evidence in the shape of mutations, sale deeds for fixation of price in respect of land proposed to be acquired for the company. Copies of the representations dated 3-4-1995 and 6th of April 1995 by

which the Petitioner company had placed on record relevant material and evidence of exemplar transactions to show the market price of the land is attached as Annexures P-4 and P-5....

The Land Acquisition Collector has considered those documents in his order dated 27-4-1995 which preceded the award. The relevant portion of the said order reads thus:

On the other hand, the acquiring Company A.C.C represented on 3-4-1995(sic) and 6-4-1995 vide letter No. GL/HRD/LAND/1616 and 2400 respectively relying upon transaction made through mutation Nos. 173, 180, 182 to 187, 189 and 190. All these transactions pertain to the period 7-8-1989 and 27-3-1991 in respect of village Baloh. They have also relied upon the judgments of Hon''ble Supreme Court Administrator General of West Bengal Vs. Collector, Varanasi, All these citations go to show that smaller transaction cannot be made basis for the determination of market value of a large area as also mere production of revenue mutations of adjacent land for that purpose is insufficient-actual sale price and circumstances of sale must be proved by claimants Hon''ble High Court of H.P. in case The State of Himachal Pradesh Vs. Daulat Ram Attri, have held - burden of proof- claimants are in position of Plaintiff-onus of proving that transaction i.e. sale deed in respect of land in locality, is genuine and bona fide on them.

3. Only after considering those transactions, the Land Acquisition Collector held that the documents relied upon by the Petitioner Company were not relevant in respect of fixing the market value on the relevant date. He proceeded to consider various other documents produced by the claimants and pointed out that even those documents were not of much use He placed reliance upon his own personal inspection and documents of transactions of other adjoining villages, i.e. Harkhar. Ultimately, he was of the opinion that the rate of Rs 7.000 per Biswa for cultivated and Abadi and Rs. 5,000 per Biswa for uncultivated land should be reasonable. That order was placed before the official of the State Government and it was approved by the official and thereafter the Land Acquisition Collector passed the award on 29-4-1996.

It is pointed out by the learned Counsel for the Petitioner that the award actually passed by the Land Acquisition Collector does not make any reference therein to the documents produced by the Petitioner or any other person. We are of the view that it was not material in view of the fact that the award passed is based upon the reasons contained in the proceedings dated 27-4-1995 to which we have already made a reference. Merely because while passing the award, the Collector does not make a reference to the evidence produced by the Petitioner, the same is not vitiated by any error apparent on the face of it. We do not find any infirmity in the award of the Collector fixing the price.

4. As pointed out earlier, the Petitioner had ample opportunity to produce evidence and it had, in fact, produced its evidence as has been noticed in the order of the Land Acquisition Collector. In such circumstances, the Petitioner

cannot complain that it had no opportunity to produce its evidence. This contention of the Petitioner, therefore, is without any merit.

5. The learned Counsel for the Petitioner placed reliance upon the judgment of the Supreme Court in *U.P. Awas Evam Vikas Parishad and Others Vs. Rajendra Bahadur Srivastava and Another*, In that case, it is seen from the facts reported that the U.P. Awas Evam Vikas Parishad, "the Board", had no notice whatever and they came to know of the proceedings only when the High Court had enhanced the amount of compensation. It was thereafter that the Board challenged the judgment of the High Court and it did not choose to challenge the order of the Officer or the orders of the subordinate Court In the circumstances, the Supreme Court pointed out that the Board had a right to challenge the judgment of the High Court enhancing the compensation and gave an opportunity to it to do so One of the principles laid down by the Supreme Court is that the local authority concerned, which had interest in the acquisition was entitled to approach the High Court under Article 226 of the Constitution to challenge the award, if the award was ex facie arbitrary or invalid. It has also been held that if no notice had been given to the party, it is open to the party to move the High Court under Article 226 to assail the award inspite of the proviso precluding the local authority from seeking a reference In the present case we have already found that the Petitioner had sufficient notice and sufficient opportunity to adduce evidence with regard to the market value.

6. We cannot overcome the limitations imposed by Article 226 of the Constitution of India as has rightly been pointed out by the learned Counsel for the Respondent. It is sufficient if we refer to the judgments of the Supreme Court in *Khanna Improvement Trust Vs. Land Acquisition Tribunal and Others*, and *Major Pakhar Singh Atwal and Ors. v. State of Punjab and Ors.* 1995 Suppl (2) SCC 401. In the latter case, the Supreme Court has observed as follows:

...therefore, when the High Court is dealing with the matter under Article 226, it is settled law that it cannot reappreciate the evidence and come to its own conclusion. It has to consider whether the conclusion reached by the Tribunal was warranted and justifiable on the evidence placed before it and whether settled legal principles of law in determining compensation were taken into consideration and if the conclusions reached were unsustainable on settled principles of law. The High Court if finds the award to be wholly unsustainable, it may be open to it to remit the matter to the Tribunal for reconsideration. The Tribunal also should determine the compensation on legal, valid, reliable and acceptable relevant evidence and not based on feats of imagination The Tribunal, if awards compensation at whim arbitrarily, apart from it being a misconduct, the award would get vitiated by error apparent on the face of the record. When such is the position, this Court cannot embark upon appreciation of evidence and come to a different conclusion and record a finding whether the market value determined by the Tribunal is just, fair and reasonable.

The learned Counsel for the Petitioner has invited our attention to the judgments

of the Supreme Court in K. Vasundara Devi Vs. Revenue Divisional Officer (LAO), and Smt. Basavva and Ors. etc. v. The Spl. Land Acquisition Officer and Ors. JT 1995 (5) SC 580. In these cases the Supreme Court had occasion to consider the entire case law and held that the Court, in the first instance, has to consider whether sales relating to smaller pieces of land are genuine and reliable and whether they are in respect of comparable lands. In the event, the Court finds that such sales are genuine and reliable and the lands have comparable features, sufficient deductions should be made to arrive at the just and fair market value of large tracks of land. The observations contained in these cases are not applicable to the case in hand.

7. In the circumstances, we are of the opinion that the award passed by the Land Acquisition Collector does not suffer from any infirmity as averred by the Petitioner herein. Hence, there is no merit in this writ petition. It deserves to be dismissed and it is dismissed. However, we make it clear that the proceedings initiated by the interest holders u/s 18 of the Land Acquisition Act will continue and will be decided in accordance with law and the Court is free to consider the claim of the interest holders and award appropriate market value of the land.

8. In view of the disposal of the writ petition, the interim order granted on 26th May, 1995 is vacated. The Land Acquisition Collector can disburse the amount with interest up-to-date.