
(2003) 08 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No.1556 of 1986

Avtar Singh and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-08-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (2004) 137 PLR 95 : (2004) 1 RCR(Civil) 693

Hon'ble Judges : J.S. Narang, J

Bench : Single Bench

Advocate : V.K. Kataria, for the Appellant; Shiv Kumar, for the Respondent

Final Decision : Allowed

Judgement

J.S. Narang, J.—The land in the revenue estate of village Mehna Tehsil and district Bhatinda was acquired for the purpose of establishing Cantonment at Bhatinda. In this regard, notification u/s 4 of the Land Acquisition Act (hereinafter referred to as "the Act") dated May 10, 1979 and the notification u/s 6 of the act dated October 4, 1979, had been issued accordingly. It may be mentioned that village Abadi was also acquired inclusive of the houses and tubewells which had been installed by the proprietors and other residents of the village for which separate award was given.

2. In the case at hand, the tubewell etc. of the claimants was assessed at the rate of Rs. 34,863/-. Being dissatisfied, reference u/s 18 of the Act had been made before the Reference Court which had been contested by the respondent. The plea of the respondent is that no objections had been submitted by the claimants before the Collector, as such he is estopped from claiming any further enhanced compensation before the Reference Court. From the pleadings of the parties, the issues had been framed and the parties have led their respective evidence. The claimants had produced expert witness Shri H.S. Viridi, retired SDR (AW2). On the other hand respondents have examined Shri K.S. Gondhara, as RW1.

3. Reference Court while examining the evidence granted compensation for superstructure and tubewell as opined by Shri H.S. Viridi, SDE as Shri Viridi has given a detailed report/opinion and he has also admitted that the equitable excavation is not possible at Bhatinda and, therefore, he has not given any vertical cost for excavation. It is easier and more practical to assess the cost by placing reliance upon the detailed estimate than the plinth area basis estimate as the same would be sort of rough estimate. It may be noticed that the Land Acquisition Collector placed reliance upon the opinion of the Government engineer who has given the assessed price of the tubewell as Rs. 34863/- as against the assessed value given by Shri Viridi s Rs. 37759/-. On the basis of it the difference between the two is approximately Rs. 2896/- and the Reference Court has granted 5% enhancement of the aforestated difference i.e. a sum of Rs. 2896/- has been enhanced.

4. The claimant still being dissatisfied has filed the present appeal. Learned counsel for the appellant has argued that the reference Court has made a categoric observation that the expert produced by the claimant has given the detailed report whereas the report given by the Government Engineer is not a detailed report as he has not given the rate for carrying out vertical excavation and has placed reliance upon the plinth area basis estimate yet the enhancement has been granted based on conjecture and surmises. It is the settled law that if the evidence produced by the claimant satisfies all the tests laid down under the law of evidence, there is no reason to discard such piece of evidence even if the amount projected is little less than double the amount in comparison to the expert produced by the other side. It has been further argued that the opinion given by this very Engineer has been accepted by this Court on a number of occasions, resultantly, this calculations are mathematically based and are not based on conjectures.

5. The perusal of the pleas of the respondents shows that the opinion of the expert produced by the claimant has not been dewatered in any manner. Apart from this, the Government Engineer has categorically admitted that the vertical excavation is not possible in Bhatinda area and, therefore, any such excavation carried out rate has not been given and that the maximum possibility to carry out such excavation is five meters, in his estimate the cost for well sinking.

6. After considering the claim of both the parties, I am of the opinion that the appeal deserves to be allowed. The Reference Court has made an effort to compare the two expert opinions and by equating both, the question has been posed as to whether reliance can be placed upon the opinion/testimony of either of the expert evidence and resultantly virtually dismissed the opinion of Shri Viridi on the premises that the value assessed is double than the one assessed by the department. I am afraid this reasoning is not justifiable perhaps the Reference Court lost sight of the fact that the opinion which was required to be given was not in fact given by the Government Engineer i.e. the cost of vertical excavation in the area of Bhatinda.

7. It is obvious that if at a particular place the vertical well sinking is difficult to achieve five meters, the cost of such well sinking would be definitely more which exercise has been carried out by the expert produced by the claimant and that such opinion given by him cannot be equated or controverted as no such opinion has been given by the Government Engineer. Thus, there was no comparison that it is not possible to carry out such excavation beyond five meters whereas the detailed cost has been given by Shri Virdi. Thus, it is obvious that there were no two opinions which require comparison as the expert produced by the claimant has given the detailed opinion while placing reliance upon the mathematical calculations and against this the Government Engineer has not given any opinion what to say of mathematical calculations. Thus, it was absolutely safe for the trial Court to have placed reliance upon the expert produced by the claimant in contrast to the opinion of the government which is not there.

8. Apart from this, the claimants have claimed shifting charges of the luggage etc. to the extent of Rs. 15,000/- which has been correctly declined by the Reference Court and against that the claimant has been awarded a sum of Rs. 300/- because the claimant has utilised his own tractor trolley for shifting purposes. In this regard, the only expenses which was liable was the fuel consumption which has been correctly granted.

9. The perusal of the statement of Shri H.S. Virdi, made in the present case shows that the approximate value for digging the well has not been mathematically tabulated. However, in another case titled as Gurnam Singh v. Union of India, R.F.A. No. 1557 of 1986, Shri H.S. Virdi has assessed the value of the tubewell at the Rs. 83,868/-. Since the area in the present case and the aforesaid appeal are almost adjacent to each other it shall be appropriate that the cost assessed by Shri Virdi in Gurnam Singh's case (supra) is taken to be the cost for digging the well in present case. The value assessed for the tubewell in the present case is awarded as Rs. 83,868/-.

10. In view of the above, the appeal is allowed and the compensation and the assessment given by Shri Virdi in Gurnam Singh's case (supra) is accepted. Resultantly, the compensation stands awarded to the extent of Rs. 83,868/- inclusive of interest and solatium awardable under law accordingly. It is clarified that any amount which has been received by the claimant as per the award of the Land Acquisition Collector and so also upon the enhancement granted by the reference Court shall be deductible accordingly. It is observed that if the possession has been taken, the interest shall be awardable accordingly.