(1994) 03 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 687 of 1988

Balbir Kaur and Others — APPELLANT

Vs

The Collector Land Acquisition Colonisation Department and Another — RESPONDENT

Date of Decision : 04-03-1994

Acts Referred:
Land Acquisition Act, 1894 — Section 23, 54

Citation : (1994) 107 PLR 465

Hon'ble Judges : Amrit Lal Bahri, J

Bench : Single Bench

Advocate : J.S. Mann, for the Appellant; G.K. Chatrath, A.G. and S.S. Kang, D.A.G., for the Respondent

Judgement

A.L. Bahri, J.—Vide this order two cross regular first appeals (RFA No. 687 & 975 of 1988) are being disposed. R.F.A. No. 687 of 1988 has been filed by Balbir Kaur and others claimants whose land was acquired, against order of Additional District Judge, Faridkot, whereby compensation for the acquired land was fixed at the rate of Rs. 1,01,000/- per acre and for super-structures existing on the land of the appellants at Rs. 20,000/-.

2. R.F.A. No. 975 of 1988 has been filed by State of Punjab against the aforesaid Award.

3. Land measuring 115 Acres 5 Kanals, 14 Marias situated in village Kotkapura, District Faridkot was acquired for setting up a new Mandi Township, vide notification issued u/s 4 of the Land Acquisition Act, dated May 5, 1982. Compensation fixed by the Collector for the land as well as the super-structure issued thereon was not acceptable to the claimants that they filed application u/s 10 of the Land Acquisition Act (hereinafter called ''the Act'') which was finally tried and decided by the Additional District Judge, Faridkot. Vide aforesaid order dated January 28, 1988 compensation at the rate of Rs. 1,01,000/- was allowed and for the superstructure a sum of Rs. 20,000/-. They were also allowed

solatium and interest as per the Act as amended in 1984.

4. Earlier several Regular First Appeals involving the land acquired were disposed of in R.F.A. No. 466 of 1988 (Jai Kaur and Ors. v. State of Punjab), decided on April 9, 1990. It was held therein that the claimants were entitled to compensation for the land acquired at the rate of Rs. 37/- per square yard. In detail evidence was discussed with regard to evaluating compensation for the super-structures. The evidence produced by the State of Punjab including statement of Sham Kumar Sharma, who had prepared the estimates, was discarded and the estimates prepared by Dhanna Singh with regard to the super-structures were accepted.

5. Learned counsel for the appellants has argued that the market value fixed in Jai Kaur''s case cannot be applied to the case in hand in view of the fact that specific evidence was led by the appellants that they had purchased the plot of land in 1974 vide sale deed Exhibit A.4 at the rate of Rs. 120/- per square yard and on this land which is abutting the road, they had constructed 3 shops, rental value of which has been fixed at Rs. 7200/-. There can be no dispute regarding genuineness of their sale transaction. In 1974 the appellants were not expecting that the land would be acquired. The purchase of the land by them in 1974 and raising shops thereon much prior to the notification issued u/s 4 of the Act would show the potential of the land for being used for commercial purpose. The appellants should be allowed normal increase in the price for a period of 8 years while determining the market value. Learned counsel also relied upon a sale which took place in 1981 of plot at the rate of Rs. 1800/- per square yard. The Government Advocate on the other hand has argued that there is no justification for allowing higher rate of compensation in this case, more so, when in all other connected cases a uniform rate of market value at the rate of Rs. 37/- per square yard was fixed (Jai Kaur''s case referred to above). Rather he contends that when a bigger chunk of land is acquired a sale transaction relating to a small piece of land as in the present case cannot form basis for determining the market value.

6. After hearing counsel for the parties, I find merit in this appeal. No doubt, sale transaction Exhibit A.4 relates to a small piece of land and it could not form basis for determining market value of 115 Acres 5 Kanals 14 Marlas of land. However, by acquisition the claimants are not to suffer but they are to be compensated with the market value of the land and in this case market value of land cannot be fixed less than what the claimants have already paid for purchase of the land in dispute as back as in 1974. As a matter of fact they are entitled to the general appreciation of the market value. It has been held by this Court in several cases that normally 12% per annum should be considered as general appreciation of land in the absence of any material. The sale transaction Exhibit A.4 vide which the appellants purchased small piece of land abutting road for raising shops, cannot be ignored. Rather it is to be relied upon though it will not be relevant in the other connected cases. The claimants would also be entitled to general

appreciation as stated above of the land for a period of 8 years as a relevant date for determining the market value of the date of issuing notification u/s 4 of the Act. In this way the appellants would be entitled to compensation for the piece of land belonging to them which stands acquired at the rate of Rs. 210/- per square yard. The contention of the learned counsel for the appellants that a sale transaction of 1980 should be taken into consideration vide which a plot was sold for Rs, 1800/- per square yard, cannot be accepted as allotment of such plots was made after making development.

7. AW 1 Dhanna Singh prepared estimate of the super-structures of 3 shops on the land in dispute at Rs. 44923/- whereas the District Judge had fixed a sum of Rs. 20,000/- for the super-structures. For the reasons already recorded in Jai Kaur''s case (supra) the evidence of the State of Punjab in this respect cannot be relied upon and statement of AW 1 Dhanna Singh is accepted. The appellants would be entitled to a sum of Rs. 44923/- for the super-structures.

8. For the reasons recorded above, R.F.A. No. 687 of 1988 is allowed with costs. The appellants would be entitled compensation for their acquired land at the rate of Rs. 210/- per square yard and for the super-structure Rs. 44923/-. They would also be entitled to interest and solatium as per provision of the Land Acquisition Apt, as amended in 1984.

9. R.F.A. No. 975 of 1988 filed by the State of Punjab is dismissed with no order as to costs.