(1983) 12 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 2091 of 1979

Bhagat Bhai and Co., Stone Crushers APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 14-12-1983

Acts Referred:

Citation : (1984) PLJ 294 : (1984) RRR 109

Hon'ble Judges : P.C.Jain;A.C.J., J and D.S.Tewatia, J

Advocate : Mr. R.L. Sarin, Advocates., Mr. M.L. Sarin, Advocates for appearing Parties

Judgement

D. S. Tewatia, J.

1. The State of Haryana vide its notification dated 24.4.1973 issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) acquired considerable area of land for a public purpose for utilization and development as residential and commercial areas in the Urban Estate of Panchkula.

2. The Land Acquisition Collector rendered his Award No. 5 for the year 197374 on 25.7.1973, for the land only as the assessment regarding the structure thereon furnished by P.W.D. (B&R) department were found to be defective. The learned Collector in the very award mentioned that a supplementary award regarding structure would be given later on. On 8.5.1974 the learned Collector made a supplementary Award No. 3 for the year 197475. Vide the supplementary award in question the Land Acquisition Collector awarded to M/s. Bhagat Bhai and Co.appellant herein Rs. 57,927 for the building and structures which they had constructed upon the part of the acquired land which they had taken on lease for 20 years for the purpose of carrying on business of stone crushing thereon. Rs. 1,500/ were awarded on account of shifting of the machinery etc. to a new site. He awarded no amount for the loss of business. Appellant sought a reference under Section 18 of the Act wherein they claimed enhanced compensation of Rs. seven lacs, the break up of which is as follows :

Rs.

1.

Installation costs of the entire machinery at a new place.

70,000.00

2.

Cost of uprooting of the machinery and breakage

40,000.00

3.

Loss of profits for 5 years as a result of displacement.

4,00,000.00

4.

Compensation for lease hold rights of 13 bighas of land for a period of 20 years @ Rs. 5,000/ per year

1,00,000.00

5.

Cost of building foundations ramps etc.

90,000.00

3. The learned District Judge while sustaining the award of the Land Acquisition Collector regarding compensation for building and structure and the shifting of the machinery etc., additionally awarded a sum of Rs. 32,000/ for loss of business for one year, besides 15 per cent solatium and 6 per cent interest per annum from the date of taking possession till the date of payment. Aggrieved by the said award the appellant preferred the present appeal in this Court which in the first instance came up for hearing before Sharma, J. Before him on the strength of The State of Kerala v. P. P. Hassan Koya, A.I.R. 1968 S.C. 1201, compensation for the loss of business was sought on the basis of a suitable multiple of the annual income from the business. On behalf of the State reliance was placed on R.F.A. No. 2002 of 1979 arising out of the same acquisition proceedings which was decided by a learned single Judge on 19.5.1981 wherein the mode of awarding of compensation on the basis of a suitable multiple of the yearly income from the business was not accepted. Sharma, J. considering the question raised before him of some importance referred the appeal to be decided by a larger Bench. That is how the appeal is before us.

4. Before the District Judge the appellant examined R. P. Sharma AW. 1 as an expert witness. He produced his plan Ex. A. 1 and his valuation report of the crusher Ex. A. 2. He also placed on record detailed report Ex. A. 3, in regard to

cost of building and other structure. Kundan Lal AW. 2 produced the original lease deed Ex. AW. 2/1 executed by the owners of the land in favour of the appellantCompany. Gurdial Singh Panesar AW. 3 Retired Garrison Engineer was examined to reinforce the statement of the expert witness. Mulkh Raj Bhagat proprietor of the appellantCompany also appeared as his own witness who produced extract from the account books Ex. AW. 4/1 and placed on record certified copy of the Khasra Girdawari in which the factum of lease deed was entered as Ex. AW. 4/2, and income tax assessment orders Ex. AW. 4/3 to Ex. AW. 4/5. The respondentState Government examined R.W. 1 R. K. Sharma, Junior Engineer, R. W. 2 Baldev Raj Sharma S.D.O., R.W. 3 R. K. Aggarwal, Executive Engineer, R.W. 4 Hira Lal Junior Engineer, R.W. 5 S. C. Jain, S.D.E., R.W. 6 P. C. Sharma, Executive Engineer and R.W. 7 Raghbir Singh S.D.E. in support of estimates made by the P.W.D. (B&R) Haryana. They placed on the record their respective estimates and plans Exs. R. 1 to R. 7.

5. The expert witness examined by appellant assessed the compensation for the building and the structure at Rs. 1,37,788/. He assessed the expenditure that would be incurred in dismantling and shifting the machinery to a new site at Rs. 50,860/. While on the other hand according to the expert witnesses examined on behalf of the respondentState Government the compensation for the building and structure was assessed at Rs. 57,927/ and for shifting of the machinery etc. at Rs. 5,329/.

6. The learned District Judge accepted wholly the estimates of compensation regarding building and structure and for shifting of machinery as furnished by the expert examined by the respondentState and rejected wholly the estimate furnished by the expert witness of the appellant, in our view not for very adequate reasons. The learned Judge rejected the estimates prepared by Mr. Sharma AW. 1 on the ground that he had visited the place only once and that too for a few hours. Testimony of AW. 3 Gurdial Singh Panesar Retired Garrison Engineer was ruled out on the ground that he was sympathiser of the appellantCompany and was having his own stonecrusher in the area.

7. There is no gainsaying the fact that the so called experts examined by either side would have the tendency to tilt towards the side which had adduced him as his witness. Where the Court has to decide as to which of the expert witnesses is speaking the truth, it cannot, without arrogating to itself expert knowledge of the kind, in an out right manner say unless there are very apparent and cogent reasons for saying so, that estimate of a given expert is wholly wrong and that of another is wholly right. In the matters of awarding compensation the Court, therefore, has to adopt a pragmatic approach and at times in the totality of circumstances of a given case it is the rule of thumb alone which may serve the interest of justice. We are, therefore, of the view that the awarding of Rs. 90,000/ by way of compensation for building and structure would to an extent meet the ends of justice as the same would neither be considered inadequate nor an over estimate of the same.

8. On behalf of the appellant our attention however, was drawn to S.L.A. Officer v. I. A. Setty, A.I.R. 1959 S.C. 429; State of Kerala v. P. P. Hassan Koya, A.I.R. 1968 S.C. 1201; Tribeni Devi v. Collector, Ranchi, A.I.R. 1972 S.C. 1417; State of Madras v. Joseph, A.I.R. 1973 S.C. 2463; Joginder Singh Saini v. State of Haryana, 1981 P.L.J. 24; and Dina Nath Mahajan v. Collector Jammu, 1981 P.L.J. 130, in an effort to persuade us to award compensation for the building and structure not on the basis of the expenditure that may be incurred on brick, mortar, wood and labour etc. as initially estimated and claimed by appellant but on the basis of the capitalised value of the actual profits from the establishment i.e. capitalised value of the net profit earned by the appellantCompany from the business of crushing carried on the said building.

9. There is no dispute with the proposition laid down in the decisions that have been relied upon by the appellant. None of the aforesaid decisions, however, lays down that the compensation for a building would be the capitalised value of the net profits of business carried on in the said building. The Courts, realising the lack of reliable and sufficient data of a comparable structure or gardens in land or forest on land, had evolved the theory of capitalised value of the asset acquired on the basis of suitable multiple. For instance, if a given asset was a building, then what would enter into such a calculation of compensation is the loss of annual rental value from the said asset and not the net profit of a business carried in the said asset.

10. In the case in hand the land was on 20 years lease with the appellantCompany. The structure belonged to the appellant while the ground on which it was raised belonged to the owner. The owner had already taken the compensation for the ground and he is not before us. So it is the superstructure alone that requires to be compensated for. That superstructure belongs to the appellant and the appellant would be entitled to the value of the superstructure alone.

11. The compensation in regard to the shifting of the machinery etc. awarded by the Land Acquisition Collector and sustained by the District Judge, in our opinion, is highly inadequate for the District Judge appears to have taken into consideration mere cartage charges of the machinery from one place to another site and in this respect also in our view it has been somewhat niggardly. Shifting, in our opinion, does not involve merely the carting of the machinery but also involves the dismantling of the foundations, cartaging of entire material and machinery and reerecting of the foundations and installing of the machinery at the new site. All this process would involve lot of expenditure. We are, therefore, of the view that under the head `shifting of machinery'', Rs. 10,000/ would be an adequate compensation.

12. As regards the compensation for loss of business two submissions have been advanced on behalf of the appellant; (i) that the compensation for loss of business representing the loss of annual net profit should be awarded at least for four years and not for one year alone; (ii) that if income tax return is to be taken

as representing the net profits of the business, then it is the income tax return for the assessment year 197374, which should have been taken to be reflecting the one year''s loss of business and not the net income shown in the income tax for the year 197273, which the District Judge has taken into consideration.

13. We find merit only in the latter submission advanced on behalf of the appellant. The reason for awarding compensation for loss of business is that if a person is dispossessed, then it would take some time for him to establish and start its business anew. The time that he may take in restarting his business at another place as counted from the date he was dispossessed of the land or building, would be the period for which the claimant would incur a loss for being not able to run his business for that period and in all fairness would be entitled to be compensated for that.

14. Stone crushing business is not a business which could, in our opinion, take the appellant more than an year to start from the date he is made to dismantle his business from the acquired place. Hence, the learned District Judge has rightly held that the claimant would be entitled to a compensation for the loss of business for one year. As to what that loss is, the District Judge was of the opinion that out of the returns for three years that the claimant had filed, it is the return which is showing the minimum net profit that should be taken into consideration because the claimant did not file any income tax return for the subsequent years although he had been carrying on business at the very place. From the withholding of the income tax returns of the latter years he drew the inference that the same must not be showing any net profit or must have been showing lesser net profit than the profit earned by him for the years regarding which he had placed on record the income tax returns.

15. We are of the opinion that the above approach of the learned District Judge was somewhat erroneous. In our view the income tax return for the accounting year immediately preceding the date of the notification would be correct indicia of the loss of the business. That year is the year 197374. Net profit earned by the appellant in that year has been shown in the income tax return to be Rs. 51,667/. We, therefore, substitute the said amount for the amount awarded by the District Judge as compensation for loss of business.

16. For the reasons aforementioned, we allow the appeal to the extent indicated with proportionate costs. Counsel fee assessed at Rs. 500/.

Appeal partly accepted.