
(1981) 01 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3822 of 1971

Bhagat Ram

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 01-01-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Town Improvement Act, 1922 — Section 36, 4, 42

Citation : AIR 1981 P&H 163

Hon'ble Judges : G.C. Mittal, J

Bench : Single Bench

Judgement

1. This order will dispose of C.W. P. Nos. 3822 to 3829 and 4000 of 1971. As they arise out of the same acquisition proceedings and a common award of the Tribunal.

2. Under Section 36 of the Punjab Town Improvement Act, 1922 (hereinafter referred to as the Act)

the Ludhiana Improvement Trust notified acquisition of land for Gill road development Scheme within the municipal limits of Ludhiana town. The Scheme was later on approved by the Punjab government (Local government) vide notification dated 6th December, 1967 u/s 42 of the Act. The total acquired area was approximately 200 acres. The Land Acquisition Collector, by award dated 14th Jan. 1969 allowed compensation at the following rates:--

For land up to a depth of 12 Gathas from the road at the rate of Rs. 30/- per Biswansi.

The rest of the land was categorised on the basis of agricultural use and compensation was allowed as follows:--

Chahi and land under the houses at the rate of Rs. 20/- per Biswansi;

Rosli (Barani) and Bhudd land at the rate of Rs. 15/- per Biswansi;

Banjar Qadim at half of Barani, i. e. at rate of Rs. 7.50 per Biswansi.

Ghairmumkin land at the rate of Rs. 4/- per Biswansi. Feeling dissatisfied with the award of the Collector, the petitioners sought reference which came up for consideration before the land Acquisition Tribunal, created under the Act, who by order dated 26th June, 1971, upheld the valuation fixed by the Land Acquisition collector but allowed 15 per cent solatium and 6 per cent per annum interest in addition to the award of the collector. Still feeling aggrieved from the award of the Tribunal the claimants petitioner have come up in these writ petition under Articles 226 and 227 of the Constitution of India.

3. Most of the point argued before me by the counsel for the claimants are covered by a Division

bench judgment of this Court in C.W. P. No. 2523 of 1970. Arjan Singh v. State of Punjab, decided on 13th July, 1976, against the petitioners and therefore, need not be discussed in detail in this judgment. In Arjan Singh's case (supra), the acquisition was for the same purpose, namely "Gill Road Development Scheme " but the award of the Tribunal which was impugned was dated 6th May, 1970, and, therefore, was a different decision of the Tribunal as compared to the present set of cases, which were decided by the Tribunal on 26th June, 1971.

4. The counsel for the petitioners has raised a few additional points as follows:

1. That the acquired land belonging to the petitioners was situated within the municipal limits of Ludhiana town and, therefore, even if for the time being it was being used for agricultural purpose, it had to be evaluated as urban property; and

2. That the acquired land had the potential for being used for urban purpose and therefore, no categorization on the basis of agricultural use could be made and that on the aforesaid basis there was an apparent error of law on the face of the record which could be corrected in the writ jurisdiction, as held by the Supreme Court in Syed Yakoob Vs. K.S. Radhakrishnan and Others, , which has been relied upon by the Division Bench of this Court in Arjan Singh's case (supra).

5. As regards the first point, the award of the Land Acquisition Collector, a copy of which has been annexed as "B" to the writ petition, mentions in the opening part of para 1 that the acquired land is within the boundary of municipal limits of Ludhiana and, therefore, it is indisputably proved that the acquired land formed part of Ludhiana town. Further, in para 18(ix) of the writ petition, the petitioner has stated as follows:--

".....The Tribunal should have fixed the market price of the land in accordance with the provision of Ss. 23 and 24 of the Acquisition act and should have taken into consideration the potential value of the land in dispute as a building site as it is situated within the municipal limits of Ludhiana, which is a very fast developing town and is Manchester of India."

The State, in its returnn gave the following reply:-

"With regard to para No. 18(ix) of the petition, I submit that the acquisition of land under the punjab town Improvement Act is quite different from the acquisition under the Land Acquisition Act. The acquisition under the Punjab Town Improvement Act is for specific purpose of development of the area of the locality concerned in which the landowners whose are is acquired also stands to benefit considerably as provided under the Act."

The relevant reply on behalf of the Improvement Trust is as follows:--

".....It is also denied that the unacquired area was all built up on or about the material date. The Tribunals order gives adequate reasons for its findings"

The reply of the State as well as of the Improvement Trust go to show that it was not disputed that the acquired land was within the municipal limits and was part of Ludhiana town, According to the State, the standard for fixing the market value of the land acquired under the Act is different from the market value to be allowed for acquisition under the Land Acquisition Act. This stand is obviously contrary to a Full Bench judgment of this Court in Devinder Kaur Vs. Ludhiana Improvement Trust, Ludhiana and Others, Wherein it was held that-

"the compensation to be awarded to the landowners whose land is acquired for a Town Improvement Trust will not be less than the compensation determined for that land under the Land Acquisition Act..."

In coming to the aforesaid conclusion, reliance was placed on a Supreme Court decision in Nagpur Improvement Trust v. Vithal Rao AIR 1973 SC 689. Accordingly, under both the Acts the claimants would be entitled to the same compensation and two different standards cannot be applied.

6. Since the acquired land was within the municipal limits of Ludhiana town, the question that arises for consideration is whether the acquired land had to be treated as urban even if it was being cultivated at the time of acquisition or was to be evaluated as agricultural land. In this regard, the counsel for the petitioners has relied upon a Division Bench judgment of this Court in Lakhmi Dass v. The Punjab State 1977 P LJ 464 wherein for fixation of compensation under the Land Acquisition Act for land situate within the municipal Limits of Ludhiana town it was held that even if the acquired property was being used for agricultural purpose, it had to be evaluated as urban property as being within the municipal limits it necessary has the presumption that it is urban property. The following observation of S. S. Sandhawalia, J. speaking for the bench deserve to be quoted :--

"As would appear hereafter this area had come within the municipal limits of the town of Ludhiana more than a year prior to the notification u/s 4 of the Act. That the city of Ludhiana is one of the principal industrial cities of the State of Punjab was not disputed before us. Nor is there any manner of doubt that the said town

has been a developing and expanding industrial centre ever since the late fifties.

The potentialities for the development of the acquired land are further evidenced from the admitted fact that this very area was earlier sought to be acquired by the Ludhiana Improvement Trust itself by a notification dated the 7th of March, 1962. The Trust obviously had sought to acquire this land for the purposes of residential and industrial development of the town as it lay not only on the fringe of the developing city of Ludhiana but had in fact been incorporated within the municipal limit itself. Though this proposed acquisition did not materialise, it nevertheless is a pointer to the potentiality of this area for development for other than agricultural purposes.

It is evident from the above that the area under acquisition had assumed primarily an urban character and had indeed ceased to be rural or agricultural in nature. Its potentiality for development as residential for development as residential colonies within the municipality limits of Ludhiana is thus too patent to deserve any great elaboration.

"....It has been stated at the bar that in fact the notification bringing the area within the municipal limits was issued nearly a year earlier in January, 1962. It inevitably flows from this that a presumption would arise in favour of the claimants that the acquired land was primarily of an urban character."

In view of the aforesaid division bench decision, the entire acquired land had to be evaluated as urban property and the Collector and the Tribunal were in error in considering the same to be agricultural and evaluating it as such. This is a patent error on the face of the record and as held by the Supreme Court in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, this Court is competent to interfere and correct the mistake in exercise of its jurisdiction under Article 226 of the constitution.

7. Coming to the second point, I find that there is a great deal of merit in the same also. This matter is partly covered under the first point. The learned counsel for the petitioners had urged that besides the fact that the acquired land is within the municipal limits of Ludhiana town, the potential of the acquired land has been established from the unrebutted and uncontroverted statement of Gian Chand claimant, who appeared as P.W. 2 before the Tribunal and stated that Calcutta Industries, I. T. L. Power House, Engineering college and other buildings from the town of Ludhiana to the acquired land were in existence at the time of acquisition. From this unrebutted evidence it is clearly established that the acquired property had the potential for being used as urban property for commercial, industrial or residential purpose. Once it is found that the property had the potential for urban purposes, no categorisation on the basis of agricultural use was permissible as held by a Division Bench of this court in *Brij Nandan Vs. State of Haryana*, . The facts of that case were that the acquisition was made for the development of sector 16 of the new industrial township of Faridabad and the Land Acquisition Collector considered the whole acquired land

as agricultural and assessed its value in three categories, Primarily on its quality as agricultural land.

On reference even the learned Additional District Judge made four blocks, not on the basis of agricultural quality of the land but on the basis of nearness to the Abadi of the town of Faridabad, nearness to the main Bazar, nearness to the road and the rest was treated in the fourth block and awarded various rates of compensation. S. S. Sandhawalia, C. J., speaking for the bench, set aside the categorisation and held that whole of the acquired land which was nearly 25 acres having potential for being developed for commercial, industrial or residential purpose had to be evaluated at a uniform rate. However, in coming to the aforesaid conclusion it was noticed that Section 16-A had also been carved out which abutted on the main G. T. Road between Delhi and Mathura and Sector 16 was just behind it. It was held that for sector 16-A abutting on the G. T. Road higher compensation was payable whereas for the sector behind it, namely Sector 16, no further categorisation or classification was permissible and, therefore, lesser compensation was allowed for Sector 16. For the acquisition of the same date and for the same purpose, while for Sector, 16-A compensation was awarded at the rate of Rs. 14.60 per sq. yard, for Sector 16, it was allowed at the rate of Rs. 10/- per sq. yard. Deriving support from Brij Nandan's case (supra) counsel for the petitioners had strongly urged that no categorisation was permissible on the basis of agricultural quality of the land and if at all any categorisation deserved to be made that could be in two blocks one abutting of the main road, as found by the collector for which compensation has been allowed at the rate of Rs. 30/- per Biswansi, and whole of the rest of the land had to be evaluated in the second block at a uniform rate. There is patent merit in the second part of the submission. The acquired land abuts on the Gill road and, therefore, the Land acquisition collector and the tribunal were right in giving higher value for the land abutting on the road but there was no justification for making sub-categorisation on the basis of agricultural quality of the remaining land lying behind the front belt.

8. For the reasons recorded above, it is held that the artificial categorisation made by the Land Acquisition collector and affirmed by the Tribunal was clearly illegal which fact is patent on the face of the record and this court is competent to interfere to correct the mistake in exercise of its jurisdiction, in view of the decision in Syed Yakoob Vs. K.S. Radhakrishnan and Others, and accordingly, while the award of the Land Acquisition collector and that of the Tribunal for the category at the rate of Rs. 30/- per Biswansi, for the land abutting on Gill road, Ludhiana, up to a depth of 12 Gathas, is maintained the whole of the remaining land would be considered as second category. Once it is held that the acquired land has the potential for being used for urban purposes, it is of no significance whether the land was recorded in the revenue papers at the time of acquisition as Chahi Rosli, (Barani) Bhudd, Banjar Qadim or Ghairmumkin, as the land of all these qualities would have the same potential for being used as building sites.

9. The question which now arises for consideration is as to what compensation has been awarded for the second category of land. It has been held by this court in Arjan Singh's case (CWP No. 2523 of 1970, D/- 13-7-1976)(supra) that in exercise of jurisdiction under Article 226 of the constitution appreciation of evidence cannot be gone into. It has also been held by a Letters Patent Bench of this Court in L. P. A No. 45. Of 1976 Amritsar Improvement Trust v. Jagdish Rai decided on 10th August, 1978, that in writ jurisdiction facts cannot be reappraised to enhance the compensation awarded by the Tribunal under the Act. Keeping in view the dictum of this Court in Arjan Singh's case and Jagdish Rai's case (supra) and of the Supreme Court in Syed Yakoob Vs. K.S. Radhakrishnan and Others, . I decline to reappraise the evidence to find out the market value of the second category of land. While doing so, I have no opinion but to fall back upon the assessment of the Land Acquisition Collector for the second category for which he allowed compensation at the rate of Rs. 20/- per Biswansi although he allowed this on the basis of agricultural quality of the land as Chahi and also for the land under the houses. There is apparent indication that the value of house sites for the strip of land situate beyond the belt abutting on the road was considered to be at the rate of Rs. 20/- per Biswansi by the Land Acquisition Collector, which has been duly maintained by the Tribunal Since I have upset the further categorisation, therefore, the whole of the remaining land would be evaluated at a uniform rate of Rs. 20/- per Biswansi, as allowed by the Land Acquisition Collector and maintained by the Tribunal.

10. For the reasons recorded above, all the writ petitions are allowed with costs. (counsel's fee being Rs. 100/- in each case) and the award of the Tribunal as also of the Land Acquisition collector, are modified to the extent that whole of the acquired land would be divided into two blocks, one for the land abutting on the road up to a depth of 12 Gathas for which compensation has been allowed at the rate of Rs. 30/- per Biswansi, and the second for whole of the rest of the acquired land for which the compensation is allowed at the rate of Rs. 20/- per Biswansi. Besides the above the petitioners would be entitled to 15 per cent solatium and interest at the rate of 6 per cent per annum on the enhanced amount from the date of taking possession till payment.

Petitioner allowed.