(1994) 09 P&H CK 0022

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 1644 of 1987

Bharpur Singh APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 09-09-1994

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

Citation : (1995) 110 PLR 189

Hon'ble Judges : N.C. Jain, J

Bench : Single Bench

Advocate : M.L. Sarin, K.S. Doad, Alka Sarin and Rahul Rathore, for the Appellant; G.K. Chatrath, A.G. and Anu Chatrath and S.C. Kapoor Ashish Kapur and Gurmohan Singh, for the Respondent

Judgement

N.C. Jain, J.—This judgment of mine would dispose of R.F.A. Nos. 1644 to 1648, 2149 to 2151, 2155 to 2159 and 2315 of 1987 all filed by the landowner-claimants as they arise out of the common Award of the Additional District Judge, Bhatinda dated 17.3.1987.

2. In order to determine the market value of the acquired land, it is necessary to have a look at the facts of the case and the evidence brought on the record of the case.

3. The State Government by issuance of notification dated 19.9.1983 u/s 4 of the Land Acquisition Act (hereinafter referred to as the Act) acquired land measuring 192 kanals situated in village Phus Mandi, Tehsil and District Bhatinda, for the construction of an Oil Depot for Indian Oil Corporation Limited, New Delhi. The Land Acquisition Collector has assessed the compensation at the following rates:

1. Nehri Rs. 30,000/- per acre. 2. Chahi Rs. 23,000/-per acre. 3. Gairmumkin Rs. 30,000/-per acre.

The landowners filed several references u/s 18 of the Act for enhancement of compensation and the Land Acquisition Court by its Award under challenge before this Court has determined the market value of the acquired land at the rate of Rs. 32,000/- per acre for Nehri, Rs. 25,000/- per acre for Chahi and for Rs. 32,000/- per acre Ghair Mumkin. In addition to the afore-mentioned valuation, the Additional District Judge has evaluated the land abutting on the road of Bhatinda-Barnala Bhucho upto depth of 50 yards irrespective of the quality of the road at the rate of Rs. 33,000/- per acre. Dissatisfied with the Award of the Additional District Judge, the landowners have approached this Court in these appeals.

4. In order to appreciate the contentions of the counsel for the landowners and the State to which reference would be made in the later part of this judgment, it is necessary to keep in the mind the oral and documentary evidence produced by the parties.

A.W.1 Hem Raj, Patwari Halga Bhagu has stated that village Phus Mandi falls in his Halqa and also produced the original aks latha of village Phus Mandi. Exh. A.I was the true copy of the original aks Latha. The acquired land has been shown by him as A, B, C and D in redlines in Exh. A.I. Railway Station of Kartar Singh Wala was described by him to be at a distance of 700/800 karams away from the acquired land. The metalled road Bhatinda-Mansa-Patiala is shown as E to E.I in red lines which was at a distance of 200 Karams from the acquired land. Mark F to Fl in Exh. Al has been described by this witness to be a road leading from Bhucho to Barnala. The acquired land abuts on the above-mentioned road as stated by this wit- ness. He further goes on to state that the acquired land was situated at a distance of 100 karams from the revenue boundary of Bhatinda. He has given the distance of the acquired land and the land sold in certain sale deeds. In cross-examination this witness was constrained to admit that the acquired land was being used for agricultural purposes. He further admitted that the lands of mutations, to which reference has been made in the examination-in-chief, abutted Bhatinda-Mansa metalled road.

A.W.2 Kuldip Singh, Draftsman, produced plan Exh. A.2 which was prepared by him.

A.W.3 Bharpur Singh to a claimant who stated that factories were being established within the radius of 9 kilometers from Bhatinda and that the acquired land was 6 kilometers from Bhatinda. The existence of the factories at a distance of 200 karams from the acquired land was deposed to by him. He further stated that the acquired land was situated at a distance of 200 yards from Bhatinda-Patiala National Highway, and that another road goes from Bus Stand village Jassi and Phus Mandi situated on Mansa-Patiala road and this leads to Bhatinda-Barnala National Highway. The road was described to be 45 foot in width. He further stated that the acquired land abutted on that 45 feet width road. The revenue limits of Bhatinda was described to be at a distance of 100 yards from the acquired land. The acquired land falls in the municipal limits of Bhatinda and that the same abutted to the railway station Kartar-Singh-wala and Phus Mandi as deposed by him. The development of Bhatinda town, according to him, was towards Mansa road. He demanded Rs. 2 lacs per acre. He stated that his land was acquired in 1974 for the establishment of cantonment and compensation at the rate of 15/- per sq. yard irrespective of the quality of the land was given to him. In cross-examination he stated that nothing was construed in the acquired land. He denied the suggestion that Bhatinda-Mansa-Patcia toad was situated at a distance of 800 Karams from the acquired land. The abadi of village Phus Mandi was one kilometer from the acquired land. e denied the suggestion that there was no factory in the acquired land at the time of notification.

R.W.1 Avtar Singh Patwari Halqa Bhagu produced the sale deeds Exhibits R.I to R.12, jamabandis Exhibits R.13 and R.14 and Map Exh. R.15. He has shown the acquired land as A,B,C,D in the Map prepared by him. The land mentioned in the sale deeds has also been shown in the map. He has stated that the acquired land was surrounded by agricultural land. In cross-examination he has given the situation of the acquired land. He stated that a road turned to Phus Mandi from Bhatinda ansa road which is at a distance of 6 kilometers from Bhatinda. Bhatinda-Mansa road has been described to be National Highway road. The road which goes to Phus Mandi according to this witnesses, is 5 Karamas in width. He has further stated that the acquired land abuts on Phus Mandi. He has denied the suggested land abuts on Phus Mandi. He has denied the suggestion that the road which goes to Phus Mandi is 8 Karams in width. He has stated that Chetak Pipe Factory was at a distance of 6 kilometers from Bhatinda from where a road turned to Phus Mandi. The building of Canara Bank was under consideration near the Pipe Factory. He has stated that there was a crossing at a distance of 6 Kms. from Bhatinda and there were many shops near that crossing. He has further deposed about the existence of many factories between Bhatinda upto the crossing on both sides of the road. Bhucho Mandi is situated on Bhatinda-Barnala road, according to this witness. R.W. 2 Vijay Kumar, Sales Officer, Indian Oil Corporation Bhatinda has stepped into the witness box-and deposed that the acquired land was agricultural in nature and that around the acquired land, also, agricultural land was also situated. He has stated that there was no residential house near the acquired land. He has further stated that there is no industry within the radius of 1 kilometer. The acquired land was stated to be situated at a distance of 1 kilometer from Bhatinda Mandi Road. The acquired land was 2-1/2/3 kilometers from the land of village Bhagu. He has stated that the price of the land had decreased due to the Akali agitation for the last 4/5 years. He has further stated that the acquired land was uneven and was situated at a distance of 10 kilometers from Bus Stand of Bhatinda and 7/8 Kms. from III Bhatinda. The distance between the Railway Station and the acquired land was given as 3/4 kilometers by this witness. In cross-examination he has stated that he joined the Indian Oil Corporation in 1985 and that he did not visit Bhatinda before 1985. The construction of the building of Indian Oil Corporation, according to this witness, started in 1986. In cross-examination he further stated that CassiPhus Mandi crossing was 1 kilometer from the acquired land. He expressed ignorance if Jassi crossing was in the revenue limits of Bhatinda. He further stated that village Phus Mandi was 2/3 kilometers from the acquired land and that he did not go ahead of Phus Mandi. Village Bhagu was ahead of Phus Mandi on the link road. Besides the afore-mentioned oral evidence, the landlords produced several sale deeds but the counsel for the landowners referred to the following sale deeds during the course of arguments, the details of which is given as under:-

Exh.No. Sale deed No. Area sold Amount of Average Distance and date K M consideration price from the per acre acqd.land. A3 1852/3.6.81 3- 2 Rs. 40000/- Rs. 103225/- 300 Karams R4 1773/1.6.81 0- 10 Rs. 5500/- Rs. 88000/- " A5 1066/6.5.81 4- 0 Rs. 49000/- Rs. 98000/- " A6 4109/31.8.82 6 0 Rs. 171000/- Rs. 228000/- " A7 2247/15.7.83 0- 17 Rs. 7000/- Rs. 65882/- 1700" A8 2303/20.7.83 0- 8 Rs. 5000/- Rs. 47058/- " "

In addition to the abovesaide sale deeds, two Awards Exhibits A.20 and A.21 have also been produced. The State of Punjab produced several sale deeds which are more than 25 in number, the details of which need not be given by me as the average price mentioned therein is less than the one awarded by the Collector and the same, therefore are irrelevant u/s 25 of the Act for determining the market value of the acquired land.

5. The Additional District Judge after appreciating the evidence has held that no notification has been produced in order to show that the acquired land was situated within the municipal limits of Bhatinda. It has further been held that no factory has been shown on the road which goes from Bhatinda-Bhucha-Barnala on which the acquired land is situated upto a distance of 8 kilometers from Bus-Stand Bhatinda. It has been found by the learned Additional District Judge that some factories were shown which abutted on Bhatinda-Mansa road and that the acquired land was situated at a distance of 7 Kilometers from Bhatinda-Mansa road. It has further been found that none of the witnesses stated that the factories were in exist fence at the time of acquisition. It has further been found that there was agricultural land around the acquired land. It is further found that there were only few establishments on the Bhatinda-Mansa road and not beyond that which means that there was no factory near the acquired land at the time of acquisition. The Railway Station Kartar-Singh-Wala was found to be 700/800 karams away from the acquired land. The Additional District Judge has further found that even on the right side of the road while going from Bhatinda to Mansa after crossing the railway line of Bhatinda-Patiala only some establishments have been shown on Bhatinda-Mansa road. After recording the afore-mentioned findings, it was held that the acquired land could not be considered to be of potential value. Exhibits A3 to A.6 the sale deeds have been rejected by the Additional District Judge on the ground that they took place more than one year back. Sale deeds Exhibits A.7 and A.8 have been discarded as they pertained to the sale of small areas of land and that they were situated at a distance of 1700 Karams from the acquired land. The Award Exh; A.20-Kapur Kaur and Ors. v. Union of India and Anr. R.F.A.No. 2366 of 1980 decided on 27th July, 1983 has been discarded on the ground that no evidence was led by the landowners about

the situation of land evaluated in the afore-mentioned Award. It was further held that the land in Kapur Kaur''s case (supra) was situated within the revenue limits of Bhatinda. The judgment given by the Hon''ble Supreme Court in Kapur Kaur v. Union of India and other Civil Appeal No. 670123 of 1984 was also not taken into consideration on the same reasoning because the judgment in Kapur Kaur''s case (supra) was given by the apex court in appeal against the Award Exhibit A.20.

6. Shri M.L. Sarin Senior Advocate counsel for the landowner-appellants with reference to the potentialities of the acquired land which have been described by him to be very high has argued that in the District Bhatinda land up to a depth of 500 meters has been held to be of very high potentiality for the purposes of development in Zora Singh v. Union of India and Anr. 1987(1) L.A.C.C. 541 by a Single Bench of this Court. The compensation determined in Zora Singh''s case (supra) was further enhanced by the Letters Patent Bench and the same was ultimately affirmed by the apex court in the judgment reported as Union of India and Anr. v. Zora Singh etc.1992(6) L.A.C.C. 91. Mr. Sarin further argued that the acquired land in Zora Singh''s case (supra) was situated between 6 to 10 miles from Bhatinda. Ac- cording to the counsel even on Bhatinda-Mansa road a belt upto a depth of 500 meter was created by this Court in Kapur Kaur''s case (supra) and the judgment has been upheld by the Hon''ble Supreme Court. In the alternative, the counsel for the landowners has argued that instance Exhibits A.3 to A.6 are relevant and comparable vis-a-vis the acquired land and that the afore-mentioned sale instances have wrongly been discarded by the Additional District Judge on the ground that they took place more than a year back. The counsel argued that the afore-mentioned rulings are applicable on all fours to the fact of the instant case as the acquired land herein was situated only at a distance of 100 meters from Bhatinda town.

7. On the other hand, the learned counsel for the State Mr. S.C. Kapur Senior Advocate for the Indian Oil Corporation for whom the land was acquired have argued that the potentialities of the acquired land are not that high as the learned counsel for the landowners has argued. It has been argued that the land was agricultural in nature and that the cases cited by the counsel for the appellants are inapplicable to the facts of the instant case because they pertain to the acquisition of land on the National Highway. According to Mr. Kapur, the amount of compensation assessed by the Additional District Judge is just and reasonable and no further enhancement is warranted in view of the location of the land.

8. Before appreciating the arguments of the counsel for the parties, it is necessary to determine whether the potentialities of the acquired land are really high. After examining the entire oral and documentary evidence and Aks laiha. I am of the view that the potentialities of the acquired land are neither too high to attract the applicability of the ratio of law down in the judicial pronouncements to which reference has been made during the course of arguments by Mr.Sarin nor the same can be described to be too low warranting fixation of compensation at

the rates given by the Additional District Judge, Railway Station Kartar-Singh-Wala was situated at about 700/800 karams from the acquired land as has been deposed by A.W.I. Hem Raj Patwari. Bhatinda-Mansa-Patiala- a metalled road is situated at a distance of 200 karams from the acquired land this road is so shown as E to El in red lines xnAKs latha Exh. A.I. Mark F to Fl in Exh. Al has been described to be another road leading from Bhucho to Barnala and the acquired land abuts on the above road as has been stated by AW.l Hem Raj Patwari. The acquired land seems to be situated at a distance of 100 karams from the revenue boundary of Bhatinda and, therefore, it cannot be said that the acquired land should be evaluated by treating the same to be agricultural in nature. However, no factory existed near the acquired land. Some factories have been shown on Bhathinda-Mansa road but the acquired land was situated at a distance of 6 kilometers from Bathinda-Mansa road as has been deposed by RW.I Avtar Singh Patwari. Moreover, no witness has stated that factories were in existence before the notification. The finding of the Additional District Judge that there were only few establishments on Bathinda-Mansa road and not beyond that, is correct. Although AW.3 Bharpur Singh who himself is one of the claimants has stated that factories were being established within a radius of 9 kilometers from Bathinda yet he could not depose about the existence of any factory near the acquired land. The acquired land, although, claimed to be situated within the revenue limits of Bathinda town yet no notification has been produced on the record of the case to show that the acquired land was within the municipal limits of Bathinda town. Simply because the acquired land is stated to be situated close to the place wherefrom the revenue limits of Bhatinda starts, it does not mean that the judicial pronouncements by which belt upto a depth of 500 meters has been created would apply to the facts of the instant case because in all the decided cases the acquired land was situated on the National Highway. Moreover, in view of the admission of A.W.3 Bharpur Singh that nothing was constructed in the acquire land and even the abadi of Phus Mandi was 1 kilometer away from the acquired land goes to show that the acquired land cannot be said to be comparable with the land of Bathinda-Mansa road where factories stood constructed. It, therefore, inevitably follows that the case law cited by Mr. Sarin pertaining to the creation of belt upto a depth of 500 meters on Bathinda-Barnala road or on Bathinda Mansa road carries no weight particularly when whatever factories are shown in the site plan Exh. A.2 the same are on Bathinda-Mansa road on the left side of the road while going. Even regarding the existence of the factories on Bathinda-Mansa road, no witness has stepped into the witness-box to state that they came into existence before the present acquisition. Even otherwise, once the sale deeds pertaining to the sales of lands are available on the record of this Court I would prefer to place reliance upon the same rather than compare the acquired land with the land on the National Highway.

9. Having rejected the first argument it remains to be decided as to whether the entire acquired land should be evaluated at a flat rate or at different rates. The second question which is to be decided by me is as to which sale deed is relevant

and what should be the correct compensation for the acquired land. 1 A perusal of the site plan Exh. A.2 shows that a compact block of 192 kanals has been acquired. May be, the land is not proved to be within the municipal limits but it has come in the evidence of A.W.3 Bharpur Singh that the revenue limits of Bathinda town are at a distance of 100 years from the acquired land and, therefore, there is no justification to evaluate the land differently simply because the same happens to the Chahi, Ghair Mumkin etc. etc. In my considered view the entire land should be evaluated at a flat rate.

10. This leads me to decide as to which sale deeds are relevant. Exhibits A.7 and A-8 being post dated notifications, I am not inclined to place any reliance upon them. Moreover, the distance of the land covered by the afore-mentioned two sale deeds is 1700 Karams. The land sold by virtue of four sale deeds Exhibits A3 to A.6 upon which I am placing reliance is situated at a distance of 300 karams from the acquired land and, therefore, all the four sale deeds, referred to above, in my considered view are relevant as they were registered before the issuance of the notification u/s 4 of the Act in the present case. The reasoning of the Additional District Judge that the sale deeds A.3 to A.6 should be discarded because they took place one year before the notification is legally untenable. All the sale deeds which are relevant can be taken into consideration irrespective of the dates when they took place. The land sold therein is also situated in village Phus Mandi which is at a distance of 300 Karams from the acquired land. The chart reproduced in the earlier part of the judgment shows that the average sale price mentioned in Exhibits A.3 to A.6 comes to Rs. 1,29,306/- per acre. In view of the smallness of the area sold in the afore-mentioned sale deed this Court is obliged to apply a cut in view of the well settled principles of law. I am of the view that a cut of 1/3 would be appropriate in view of the peculiar facts and circumstances of the instant case and that neither higher suit nor a lower one is warranted in the present case. Higher cut should not be applied for the simple reason that I am not giving any price rise on account of difference between the dates in the various sale deeds and the date of notification u/s 4 of the Act in the present case. Lower cut is also not to be applied because there was no construction around the acquired land at the time of the notification. Moreover, the acquired land was situated in a village and not on the National Highway. After applying all my guess Work which is inherent in land acquisition cases, I am of the view that a cut of l/3rd would meet the ends of justice. After applying a cut of l/3d the acquired land is evaluated at Rs. 86204/- per acre.

11. For the reasons recorded above, the appeals filed by the appellants are allowed to the extent indicated above with proportionate costs. The appellants are further held entitled to the grant of all the statutory benefits of the amended provisions of Sections 23(1A), 23(2) and 28 of the Act.

