(2005) 10 P&H CK 0075

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 363 of 1989 (O and M)

Bhupal Singh and Others — APPELLANT

Vs

State of Haryana — RESPONDENT

Date of Decision : 19-10-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27
Haryana Development and Regulation of Urban Areas Act, 1975 — Section 7A
Land Acquisition Act, 1894 — Section 18, 23(1A), 4, 6

Citation : (2006) 143 PLR 234

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

Bench : Single Bench

Advocate : M.L. Sarin and Hemant Sarin, for the Appellant; Ramesh Hooda, for the Respondent

Final Decision : Allowed

Judgement

S.S. Saron, J.—This appeal has been filed against the order dated 21.11.1988 passed by the learned Additional District Judge Faridabad whereby reference u/s 18 of the Land Acquisition Act 1894 (Act-for short) has been partly allowed and compensation for the acquired land @ Rs. 22/- per sq. yard has been awarded to the claimants. The value of the roads has also been enhanced from Rs. 35,000/- to Rs. 51,200/-. Besides, the claimants have been held entitled to statutory solatium at 30% of the enhanced and amount of compensation besides interest @ 9% p.a. for the first year and @ 15% p.a. for the subsequent years till the date of payment. Besides, they have further been held entitled to the amount calculated @ 12% p.a. on the aforesaid market value in terms of provisions contained in Section 23(1-A) of the Act.

2. The Haryana Government issued a notification dated 4.11.1977 u/s 4 of the Act. This was followed by notification dated 1.11.1980 u/s 6 of the Act. A big chunk of land measuring 689 Kanals 17 Marlas situated within the revenue estate of Village Atmadpur Hadbast No. 12, Tehsil Ballbhgarh, District Faridabad, was

acquired for public purpose namely for development and utilization of land as residential area for Sectors 31, 32, 35 and 36 by the Haryana Urban Development Authority (HUDA - for short). Award No. 13 of 1982-83 was made by the Land Acquisition Collector. The persons interested had claimed compensation at the rates varying from Rs. 60/- to Rs. 300/- per sq. yard. However, keeping in view the rates applied by the Collector and other attending circumstances, compensation per acre was awarded at the following rates:

1. Chahi - Rs. 30,000/- 2. Alabarani - Rs. 28,000/- 3. Bhud - Rs. 25,000/- 4. Banjar and Gair Mumkin - Rs. 22,000/-

Compensation was also awarded for super structures in respect of buildings and roads as assessed by the XEN, HUDA. The claimants and the interested persons feeling dissatisfied with the aforesaid Award of the Land Acquisition Collector, preferred a reference u/s 18 of the Act. According to the claimants, the market value of their land which was situated near the Delhi-Mathura road and surrounded by factories and built up Sector 8, Faridabad, was not less than Rs. 50/- per sq yard and compensation awarded to them by the Land Acquisition Collector, it was alleged was highly inadequate. The grant of compensation as regards building structure, etc. especially with respect to roads was also claimed to be inadequate and it was alleged that the same was liable to be fixed at Rs. 1,50,000/- in stead of Rs. 40,000/-. It was submitted that the compensation awarded was quite fair and adequate. An objection was raised as regards sale of certain land by the claimants to which a replication was filed admitting the sale of some land and denying the transfer of some. Besides, objection regarding wrong description of land and area was also raised. The learned District Judge, Faridabad, in the reference petition, framed the following issues on 27.7.1988:

1. What was the market value of the land in dispute at the time of Notification u/s 4 of the Land Acquisition Act?

2. What is the effect of pendency of the Civil Writ Petition No. 5185 of 1983, as alleged?

3. Whether the petitioners have sold Khasra No. 18/1 of Reel No. 33, as alleged. If so, to what effect?

4. Whether the petitioners are entitled to compensation with regard to land measuring 9 kanals 2 marlas of Khasra No. 21 and 22 of Rect. No. 23 instead of 6 kanals 16-1/2 marlas, as alleged? OP

5. Relief.

After considering the evidence and material on record, the reference application, , as already noticed, was partly allowed against which the present appeal has been filed by the claimants for the grant of higher compensation to the extent of Rs. 50/- per sq. yard.

3. Mr, M.L.Sarin, learned Senior Advocate appearing with Mr. Hemant Sarin,

Advocate, for the claimants-appellants has contended that the respondent State at the relevant time itself had been selling land @ Rs. 150/- per sq. yard. Besides, the value of the road is not less than Rs. 1,50,000/- as per documentary evidence on record.

4. During the pendency of the appeal CM 218-CI of 2003 has been filed for production of additional evidence. It is submitted that the land of the appellants that has been acquired,is comprised in Sectors 31; 32, 35 and 36, Faridabad. Another notification u/s 4 of the Act was issued on the same day i.e. on 4.1!?; 1977 for acquiring land in Village Palla for development of residential area in Sector 37, Faridabad. The land of Village Palla, it is submitted, adjoins the appellants'' land in Village Atmadpur, In respect of the acquired land vide notification dated 4.11.1977, this Court has fixed the market value @ Rs. 63/- per sq. yard in the case titled MA Greater Delhi- Planners Pvt. Ltd v. State of Haryana R.F.A. 1175 of 1991 decided on 30.U2004 (Annexure; A I). Thereafter, another R.F.A. titled Greater Delhi Planners Pvt. Ltd. v. State, of Haryana R.F.A. 1861 of 1995 was disposed of on 27.2.2004 (Annexure A2) in terms of the earlier order passed on 30.1.2004 (Annexure Al). A copy of the plan prepared by the department of Town and Country Planning, Haryana, to show the location of the two villages has been submitted as Annexure A3. Besides* it is submitted that this Court in the case title State of Haryana v. Escorts Dealers Development Association Ltd. R.F.A, 253 of 1992 decided on 26.11.1993 (Annexure A4) disposed of the compensation payable in respect of village Mewla Maharajpur District Faridabad, which was acquired for constructing the link road from Delhi-Mathura road to Sector 26, Faridabad for which notification u/s 4 of the Act was published on 30,7.1987. In order to show the exact location of Sector 46, Faridabad, the Delhi-Mathura road and Sectors 31, 32. 35 and 36, Faridabad, a copy, of the final development plan of the Faridabad-Ballabhgarh controlled areas dated 15.11.1991 (Annexure A5) has-been filed it is: contended that the orders dated 30.1,2004 (Annexure Al), date,(1,27.2,2004 (Annexure A2) and dated 26.11.1993 (Annexure A4) are the decisions of this Court. .However, the plans (Annexures A3 to A5) came into existence after the impugned decision of the learned Additional District Judge. Therefore, it is contended that the name are liable to be admitted in evidence.

5. A reply has been filed to the application by the Land Acquisition Officer, Urban Estate, Haryana, Faridabad, in which it is stated that the application is not, maintainable in its present form. Besides, the applicants have no locus standi to file the said application. It is contended that the evidence of the applicants was, closed by the; learned Reference Court after full satisfaction and if any additional evidence was to be adduced, the applicants could have adduced the same during the pendency of the reference petition u/s 18 of the Act It is also submitted that the land of the appellants, was acquired in the revenue estate of Village Atmadpur of Sector 31 vide notification dated 4.11.1977 whereas the land in Sector 37 falls in the revenue estate of Village Palla which touches the boundary line of Greater Delhi, Therefore, the said two pieces of land are not

comparable .for the purposes of assessing the market value. A copy of the master plan showing the acquired land in the present case (in red colour) and the land acquired for Sector 37, 33 and 34 (shown in blue colour) has been attached as Annexure R-l. The judgments rendered in the case of Greater Delhi Planners Pvt. Ltd. v. State of Haryana R.F.A. 1175 of 1991 and Greater Delhi Planners Pvt Ltd v. State of Haryana R.F.A. 1861 of 1995, it is submitted, relate to village Palla wliich is a different revenue estate from the land of the appellants, the judgments, a reference to which has been made by the appellants, it is submitted, are inapplicable in the case.

6. After having given my thoughtful consideration to the application under Order 41 Rule 27 C.P.C. filed by the appellants and the reply filed by the respondent to the same, it may appropriately be noticed that the orders dated 30.1.2004 (Annexure A1) 27.2.2004 (Annexure A2) and 26.11.1993 (Annexure A4) have been passed by this Court to which a reference can even otherwise be made during the course of hearing. Besides, the same are per se admissible in evidence. The same have admittedly been passed after the passing of the reference order by the learned Additional District Judge, Faridabad, on 21.11.1988, The site plans (Annexures A3 and A5) are official documents. The site plan (Annexure A3) is the plan showing the urban area limits for the purposes of Section 7-A of the Haryana Development and Regulation of Urban Areas Act 1975 (Amendment Act. 1989). The authenticity of the same is not disputed by the respondent. The site plan Annexure A5) is the final development plan for Faridabad-Ballabhgarh controlled area which is also not denied by the respondent. In fact, the respondents have filed a copy of the master plan of the Faridabad (Annexure R1) which is more or less in conformity with the plans (Annexures A3 and A5). The subsequent judgment given by the High Court awarding higher compensation is a relevant material to be considered while awarding compensation to the claimants whose land has been acquired. In order to see the location and the difference of the areas, the taking into account the site plans (Annexures A3, A5 and R1) would be necessary for the just decision of the case so as to appreciate the contentions of the learned Counsel for the parties and see the proximity of the acquired land in the present case of village Atmadpur to that of Village Palla in respect of which compensation has been awarded. The orders of the Court (Annexures Al, A2 and A4) as already noticed, have crone into existence after the passing of the reference order by the learned Additional District Judge. Therefore, these could not have been produced before the reference Court. In any case, these documents would be required so as to enable this Court to pronounce the judgment. Consequently, the documents (Annexures Al to A5 and Rl) are taken on record and admitted as additional evidence. This is more so for the reason that the orders of this Court are per se admissible and there is no serious challenge to the authenticity of the site plans submitted by the respective parties.

7. The learned Senior Counsel appearing for the appellants contends that in respect of similarly situated area, i.e. of Village Palla, compensation to the extent

of Rs. 63/- per sq. yard has been awarded for the acquired land. The area of Village Palla, it is contended, has now been carved out for Sector 37 whereas from the land of village Atmadpur of the appellants, Sector 31, 32, 35 and 36 have been carved out. Therefore, the appellants are entitled for compensation to the said extent or in any case below that. In response Mr. Ramesh Hooda, learned Counsel for the State submits that the judgments (Annexures A1, A3 and A3) referred to by the learned senior counsel appearing for the appellants are inconsequential as village Palla and Village Atmadpur are two separate revenue estates. The land forming part of Village Palla from which Sector 37 has been carved out, touches the boundaries of Greater Delhi and the same cannot be compared with the land of Village Atmadpur for assessing the market value. He has referred to the site plan (Annexure R1) attached to the reply of the application under Order 41 Rule 27 C.P.C., which has been taken on record.

8. I have given my thoughtful consideration to the contentions of the learned Counsel for the parties,

9. It is not disputed that the land of the appellants has been acquired in pursuance of notification dated 4.11.1977 issued u/s 4 of the Act. The land of village Palla was also acquired in terms of notification dated 4.11.1977 issued.under Section 4 of the Act. In the case of Greater Delhi Planners Pvt. Ltd. v. State of Haryana R.F.A. 1175 of 1991 decided on 30.1.2004 (Annexure A1), compensation @. Rs. 63/- per sq. yard has been awarded. A reference was made to the connected appeals arising out of the acquisition proceedings pertaining to the adjoining lands being R.F.A. 70 of 1987 and other appeals having been decided on; 30.1.2004. For those appeals, the claimants-land owners were found entitled to Rs. 65/- per sq. yard as compensation for their acquired land. Accordingly Rs. 63/- per sq. yard was awarded for the acquired land of village falling in the revenue estate of Village Palla. In similar terms, another case of Greater Delhi Planners, pvt. Ltd. v. State of Haryana R.F.A. 1861 of 1995 was disposed of on 27.2.2004 (Annexure A-2). A perusal of the site plan filed by the parties-shows that the lands which have been acquired in the present case are further away from Delhi side towards Ballabhgarh whereas the land of Sector 37, Faridabad, which was part of revenue estate of Village Palla touches the land of Greater Noida towards Delhi. In the case of Radhey Sham v. State of Haryana 1980 P.L.J. 77 a Division Bench of this Court considered some of the similar acquisitions on the Delhi-Mathura road at Faridabad pertaining to Sectors 19, 16-A, 15-A and 12 of Faridabad. The following observations of the Division Bench are apposite:

Before dealing with the instances, the locations of the Sector deserves to be highlighted. In the map on the record, the location of Khasra No. 52/1 has been shown. Out of this Khasra, the land acquired for Sector 28 has also been depicted. It abuts on the Delhi-Mathura highway and is in the line with Sectors 19, 16-A, 15-A and 12 of the Faridabad Complex which also abut on the Delhi-Mathura highway. Sector 28 is nearest to Delhi, then comes Sector 19 and so on.

The land Acquisition Collector had found and the Additional District Judge also accepted that the land acquired was surrounded by the Abadi which had the potentiality and higher market value as it was near the Delhi-Mathura road and on this basis, did not fix compensation on the basis of the quality of the land, but made only two categories (i) for path-ways, and (ii) for the remaining land. This clearly shows the potentiality of the land in dispute for being used for industrial, commercial and residential purposes and as such the two categories made by the Land Acquisition Collector and upheld by the Additional District Judge, do not deserve to be sustained. The whole of the land deserves to be evaluated at the flat rate after finding out its market value.

The above observations show that a Division Bench of this Court had in respect of Faridabad complex, taken into consideration the land which was towards Delhi and the land which was away from Delhi for the purposes of fixing the compensation. In the case of State of Haryana v. Escorts Dealers Development Association Ltd. R.F.A. 253 of 1992 decided on 26.11.1993 (Annexure A4), this Court considered the compensation payable in respect of land situated at Mewla Maharajpur which was acquired for the purpose of constructing link road from Delhi-Mathura road to Sector 46 of the Faridabad-Ballabhgarh controlled area under the Haryana Urban Development Authority Act 1977. The notification for acquiring land measuring 3.59 acres in the said case was issued on 30.7.1987. It included 11 Kanals 13 Marias of land in respect of which cross-objections have been filed which was the matter in dispute in the said case. The land acquisition Collector passed an Award dated 5.3.1990 and assessed the market value of the acquired land @ Rs. 90,000/-per acre. For the structures, it was observed by the Land Acquisition Collector that a supplementary Award would be announced. On a reference u/s 18 of the Act, the learned Additional District Judge Faridabad evaluated the land of the cross-objectors at Rs. 3,000/- per sq. yard primarily on the ground that the appellant-State of Haryana in the said case had purchased the disputed land for a sum of Rs. 15.00 lakhs. It was contended by the cross-objectors that the claimants were entitled to the grant of that much price which the appellants had paid for the purchase of the disputed land. The acquisition in the said case had taken place on 30.7.1987 i.e. after about 32 months of the sale deed for which 12% p.a. on account of time lag between the date of sale and notification u/s 4 of the Act was liable to be paid. This Court, after considering the cross-objections, held the land owners entitled to compensation which when calculated in terms of sq yards, the price came to Rs. 255.49 per sq yard. The land owners were also held entitled to 12% p.a. for the price rise in view of the law laid down by this Court in the case of Inder Singh v. State of Punjab (19882) 94 P.L.R. 190. The appeal was accordingly disposed of.

10. In the case in hand, the position is that the land of village Atmadpur of the appellants is slightly away from the land in village Palla in which Sector 37 has been carved out. However, it is not shown to be too far away and as per the site plan (Annexure A3), the boundaries of both the villages touch each other and a canal passes through the area of both the lands. The site plan (Annexure R1)

also depicts the land in which the land of Greater Delhi Planners falls and that of the appellants. The land of Greater Delhi Planners is on the eastern side of the GT road whereas that of the appellants is on the western side. Besides, Sectors 33 and 34 intervene the land of the appellants and Sector 37 on the eastern side of the GT road but it is part of the land of Greater Delhi Planners as per the site plan (Annexure R1) submitted by the respondent-State. Therefore, those lands are not too far away from each other. In the circumstances there is some evidence and material on record to show that the acquired lands for which enhancement of the market value is sought, is not too far away from the land of Greater Delhi Planners in respect of which compensation amounting to Rs. 63/- per sq yards has been awarded. In the case in hand, the compensation claimed in the appeal is @ Rs. 50/- per sq yard which, in the circumstances, cannot be said to be excessive keeping in view the fact that Rs. 63 per sq, yard has been awarded for the land which is at some distance away in the case of M/s Greater Delhi Planners (supra). Therefore, the Award of compensation at the said rate of Rs. 63/- per sq. yard, which is the amount claimed in the appeal would be just and reasonable and the appeal is liable to be allowed for this enhancement.

11. For the fore going reasons, this appeal is allowed and the market value of the acquired land for the purposes of compensation payable to the appellants is assessed at Rs. 50/- per sq. yard. Besides, additionally the appellants would be entitled to statutory benefits as per amended provisions of the Act, in accordance with law. There shall, however, be no order as to costs.

