(1994) 10 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6893 of 1986

Bikkar Singh and Others APPELLANT

Vs

The Land Acquisition Tribunal, Improvement Trust and Others RESPONDENT

Date of Decision : 12-10-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 23

Citation : (1995) 109 PLR 597

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : G.S. Punia, for the Appellant;

Final Decision : Allowed

Judgement

V.K. Bali, J.—This order shall dispose of four connected writ petitions bearing Nos. 6893 of 1986, 1249 of 1987, 7423 of 1988 and 9352 of 1987 as common questions of fact and law are involved in all these petitions. Facts have, however, been extracted from Civil Writ Petition No. 6893 of 1986 (Bikkar Singh and Ors. v. The Land Acquisition Tribunal, Ludhiana, Improvement Trust, Ludhiana.

2. State Government on behalf of Improvement Trust, Ludhiana, acquired 129 acres of Land situated in revenue estate of village Barewall Awana and Tharike for a public purpose i.e. for development-cum-housing accommodation scheme and expansion scheme known as 129 Acres Scheme. Notification u/s 36 of the Punjab Town Improvement Act was issued on 17th December, 1976 whereas the Government granted sanction u/s 42 of the Improvement Trust Act vide notification dated 13th of December, 1979. Land Acquisition Collector vide award (Annexure P-2) dated 9th of February, 1981, evaluation the market price of the acquired land at Rs. 37,500/- per acre and while applying a further cut of 10% awarded compensation to the petitioner-claimants at Rs. 33,290/- per acre. Petitioners sought reference u/s 18 of the Land Acquisition Act as they were not satisfied with inadequate compensation awarded to them by the Land Acquisition

Collector. The Land Acquisition Tribunal enhanced the compensation of the petitioner at the rate of Rs. 43,560/- per acre i.e. Rs. 9/- per Sq. yard. They were also allowed 30% solatium, nine per cent interest for the first year and 15 per cent interest per year for subsequent years from the date of taking possession of the acquired land till the date of payment of enhanced compensation. The petitioners had still not felt satisfied and filed writ petition praying for further enhancement. The writ petition was admitted on 19th of December, 1986 but till date no written statement has been filed in the matter and no one has chosen to appear to contest the claim of the petitioners.

3. Mr. G.S. Punia, learned counsel appearing for the petitioners vehemently contends that Tribunal grossly erred while applying a cut of 2/3rd from the market value assessed by him and such a cut was wholly unwarranted in the facts and circumstances of this case. In paragraph 11 of the Award given by the Tribunal the market value has been assessed. For appreciating the point canvassed before this court, it shall be useful to reproduce the same:-

"11. Regarding the market value of the acquired land on 17.12.1976, it transpires that the land subject matter of the sale deeds Ex. A-l is located in the area of village Sunet which falls within corporation limits of Ludhiana town. According to this sale deed, land measuring 228 Sq. yards was sold for Rs. 6171/- i.e. at the rate of Rs. 27 per sq. yard. Similarly the perusal of the sale deeds Ex. A-2 to Ex. A-4 shows that small pieces of land measuring 250 sq. yards located in the area of village Barewal were sold at the rate of Rs. 26/- or 28 to 30 per sq. yard but these sale deeds pertain to the land located on the main road and thus have better situation potential. Similarly land subject matter of sale deed Ex. A-5 touches the two roads. This land was sold on 21.3.1975 at the rate of Rs. 22.58 per sq. yard. The average value of the market price of these five sale deed works upto Rs. 27/- per sq. yard. In view of the factum that these sale transaction, pertain to small pieces of land provided with roads whereas the acquired land of the petitioners falls at a distance of 150 karams from Ludhiana Ferozepur Road, it transpires that at least 1/3rd of the market price has to be deducted as required for providing amenities etc. So the value of the acquired land of the petitioners being located at a distance of 150 Karmas from Ferozepur Ludhiana metalled road and outside limits of the municipal corporation would be 1/3rd of the market value of the above referred sale deeds. So, the market value of the acquired land is assessed at Rs. 43,560/- per acre. Thus, compensation of the acquired land of the petitioners is enhanced to Rs. 43,560/- per acre of Rs. 9/- per Sq. yard. They shall be entitled to twelve per cent over and above the said compensation from the date of notification u/s 36 of the Punjab Town Improvement Act till the date of the pronouncement of the award or taking the possession, which ever is earlier. They shall also be entitled to 30% solatium over the compensation in view of section 23 of the Land Acquisition Act. The petitioners shall also be entitled to 9% per annum interest for the first year and 15% per annum for the subsequent period from the date of taking possession of the acquired land till the date of payment of enhanced compensation. The petitioners shall also be entitled to costs of this reference. Counsel fee is assessed at Rs. 200/-".

4. It is not only from paragraph 11 alone that it is spelt out that market value of the land which was located on the main road was assessed at Rs. 27/- per sq. yard but this fact is also clear from the award Annexure P-I annexed with Civil Writ Petition No. 7423 of 1988 given by Shri T.S. Cheema, President Land Acquisition Tribunal, Ludhiana. The said award also deals with the same notification. At page 11, it has been clearly mentioned that the claimants shall be compensated for their acquired land at the rate of Rs. 27/- per sq. yard of the land abutting on the Ludhiana-Ferozepur road upto the depth of 25 Karams whereas with regard to remaining land compensation was assessed at Rs. 9/- per sq. yard. It is clear from award Annexure P-2 that the land subject matter of the Acquisition was bounded as follows:-

NORTH : Bounded by Ludhiana-Ferozepur Road.

EAST : Bounded by common village boundary of Barewal Awana &. Sunet, Threeke and Sunet.

SOUTH : Bounded by Ludhiana Ferozepur Railway Line.

WEST : Starting from South Western corner of Khasra No. 293 of village Threeke towards North along western boundary of Khasra No. 293, 292, 291 and 273, 272, 252 and 251. Eastern boundary of Khasra No. 225 and along the Western boundary of Khasra No. 226 and 227 of village Threeke then crossing common village boundary of Khasra No. 1123, 1124 and 1125 of village Awana."

5. It is also made out from the award that whereas area of village Threeke is outside Municipal Limits, the area of village Barewal Awana is within municipal limits. The very scheme for which the land was acquired suggests that it was acquired for construction of houses. In paragraph 36 of Award (Annexure P-7) which award as referred to above, is with regard to the same very acquisition, it is mentioned that there was no dispute between the parties that the acquired land touches Ferozepur Road and falls just across the Sidhwan Canal from the habitation of Sarabha Nagar and Punjab Agricultural University, Ludhiana, while Milk Plant is located just across Ferozepur Road to the acquired land. It has further been stated that the acquired land touching the main Ferozepur Road had a great potential of being used for commercial purposes. For this precise reason approach of the Land Acquisition Collector in classifying the acquired land immediately abutting the Ferozepur Road in block was justifiable, as certainly the land touching the main road had better potential for being used for commercial purposes. The Tribunal further observed that it was, however, not understandable as to how the land of block B, belt-A, which also touches the said Ferozepur Road, would be of low category simply because it fell a few yards away from Ludhiana City viz-a-viz. the land of belt A of block A. With regard to land falling on village link road or village circular road, or in between the habitation and the main Ferozepur Road, it was observed that the said land would have slightly

better potential for being used for residential purpose than the land located far away from the road and village habitation. In view of the situation of the land, it was classified into three categories. In view of the facts as has been referred to above the only question that arises for determination is as to whether the cut of 2/3rd that has been applied is justified. A Division Bench of this Court in Kehar Singh and Others Vs. Punjab State and Others, held that the Courts of law would generally be disinclined to categories the land and would be inclined to evaluate the entire land at a flat rate whenever it has got the potentialities for being used for residential, commercial and industrial purposes. The factum of the land being situated in a complex block is another consideration which must weight with the Court to do away with the belting system. The location of the land in urban area is another factor leading towards the grant of flat rate when the entire land is acquired by one notification. Even suburban properties near or around the Municipal Town can have the same potentialities until and unless evidence to the contrary is produced.

6. Petitioners rely upon Award Annexure P-7 in Civil Writ Petition No. 6893 of 1986 vide which while dealing with the land acquisition of village Sunet and which land as per site plan Ex. P.8 is adjoining the land of the petitioner in this case was evaluated. The Tribunal assessed market value of the said land at the rate of Rs. 450/- per marla but in so far as the land located away from the same road i.e. Ferozepur road assessed market value at the rate of Rs. 236/- per Marla, i.e. little above half of the one which was assessed for near the road. In view of the fact that the land subject matter of acquisition had also the same potentiality as it was acquired alongwith the land located abutting in one compact block, in considered view of this Court a cut of 2/3rd should not have been applied. The Court, however, does not find any substance in the contention of the learned counsel that the entire land should be valued at the same rate as admittedly the land located near the main road has far better potentiality from the one than that is located farther from the road. Further, a cut of one half would in the totality of the circumstances of this case would lead to giving just and proper compensation to the petitioners. In as much as the exact half of Rs. 27/- comes to Rs. 13.50, by rounding the figure, the compensation is assessed at Rs. 14/- per sq. yard. The petitioners shall also be entitled to the statutory reliefs as admissible to them under the Land Acquisition Act.

7. The petition is, thus, allowed in the manner indicated above but there shall be no order as to costs.