(2012) 09 P&H CK 0221

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 2133, 2467, 2468, 2469 and 2470 of 1991 and Regular First Appeal No. 32, X Obj No. 92-CI of 1992 in 338, 339, 340 and 341 of 1992

Binder Singh and Others — APPELLANT

Vs

State of Punjab and Another — RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:
Land Acquisition Act, 1894 — Section 4

Citation : (2012) 4 RCR(Civil) 600

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : M.L. Sarin, with Mr. Nitin Sarin, Mr. R.S. Randhawa and Mr. H.N. Mehtani, No. 3, for the Appellant; Ram Lal Gupta, Addl. A.G., Punjab, for the Respondent

Final Decision : Dismissed

Judgement

K. Kannan, J.—Of the appeals, except appeals in RFA Nos. 338 to 341 of 1992, all other appeals are at the instance of the land owners seeking for enhancement of compensation for acquisition of property made after notification issued u/s 4 on 19.07.1984 for purpose of establishing a project for the manufacture of Pozzalona Cement at Bathinda. The Collector had originally assessed the compensation at Rs. 80,000/- per acre upto the depth of 80 karams from Bathinda Malout main road and for rest of the property at Rs. 55,000/- per acre. The Reference Court discarded the method adopted by the Collector, having regard to the fact that the property was used for a single purpose in one single block and held that the property would require to be considered for determination of compensation also as one block. I shall state at the outset that the single valuation adopted by the Court to be correct. Before the Reference Court evidence was brought setting out the topography of the land with reference to the adjoining properties and the attempt of the land owners had been to show that the property had immense potential for use for industrial purposes since industries had already come about in the immediate vicinity. The land owners were relying on documents of private sales apart from compensation determined already for acquisition of property in the adjoining areas. The contention was that the acquired land was adjacent to thermal plant which extended upto the Sirhind Canal and the Sirhind Canal was itself adjacent to several shops. There were cinema houses situate near the Sirhind Canal. The land owners would also refer to the existence of Krishna Paper Mills, J.B. Factory, Crude Oil Factory etc. which were in front of the land acquired. In its immediate proximity was NFL factory and its colonies situate in about 2 kms distance. The property was situate within the municipal limits of Bathinda and nearer to the land for polytechnic college.

2. Of the documents relied on by the appellants, Ex.Al/A was copy of the judgment in 1988(1) R.R.R. 43: RFA No. 440 of 1986 in Zora Singh v. Union of India where the compensation had been determined at Rs. 70,000/- per acre, which was later enhanced in appeal in LPA No. 1251 of 1987 in Ex.A4 but it was found to be far off from the bus stand at Bathinda and the Court found that this was not relevant piece of evidence. Another document, which was relied on by the petitioners was a copy of the judgment in RFA No. 2162 of 1980 dated 10.09.1984 under Ex.A8 which was with reference to acquisition of property for the establishment of urban estate at Phase No. III. In the judgment referring to Exs. A-4, A-6 and A-8 for establishment of cantonment and urban estate phase-III respectively, compensation had been determined finding that the acquisitions had been with reference to periods between 1965-69 and therefore, the Court worked out escalation at the rate of 12% and took the overall compensation at Rs. 34/- per square yard.

3. The learned Senior Counsel appearing on behalf of the land owners points out that they were actually relying on the value of the property determined for extension of NLF colony under Ex.A7 but this was discarded on the ground that the Ex.A7 was in relation to property where there had been already a well developed field and there had been palatial buildings with modern facilities and Ex.A7 could not afford the basis. Another document of relevance was Ex.A5, which was with reference to land for establishment of a municipal park where a compensation of Rs. 176/- per square yard had been fixed. This was again discarded on the ground that this was on the other side of Sirhind Canal and was close to the Bathinda town, while the land acquired for the construction of municipal park was on the ''city side'' of Sirhind Canal, the acquired property, however, was towards the other side of the canal away from Bathinda town. He, therefore, also held that Ex.A-5 sale deed could not be the basis for consideration. As far taking the valuation for acquisition of properties after notification in the year 1975 to 1979 as relevant, I must observe that it will be risky to rely on transaction for determination of valuation of properties which were through notifications more than 4 or 5 years prior to the date of notification. In The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and Another, the Supreme Court, while observing

that for urban properties, an escalation of 10 to 15% could be provided for each year, cautioned that if the gap is longer, say beyond 4 to 5 years, it would be unsafe to provide for rate of escalation at the same rate. In circumstances where there is no evidence placed with reference to properties in the immediate vicinity with reference to determination of compensation for years pertaining to notifications issued u/s 4 that were proximate to the notification issued, it could become a Hobson''s choice to rely on what is produced before the Court and work out a valuation making same proximation towards the rate of escalation. However, in cases where there are transactions relating to same acquisition period and there have been assessments of compensation for the same period, it should only be appropriate that the Court follows the same. In this case, the assessment becomes easier by reference to a judgment rendered in two cases in relation to acquisition of property in the very same town. One is a case in National Fertilizers Ltd. Vs. Jagga Singh (Deceased) through L.Rs. and Another, where the Court was determining compensation in relation to property acquired for NFL colony. In this case, the Supreme Court was considering the acquisition for the requirement of dwelling houses for the employees of NFL where the State of Punjab had acquired 29.68 acres in the village Bhatinda by notification dated 24.01.1983. The Supreme Court was considering the assessment of compensation by reference to the land acquired for municipal park in the year 1983 where the compensation had been determined at Rs. 120/- per square yard as just and reasonable. This is the very same document as Ex.A7 relied on before the Reference Court which was discarded by the Court. It was on a reasoning that the property had been already well developed and having palatial buildings. It was probably relevant as enabling the Court to refer to it as representing the price at one end of spectrum of assessment to compensation for a developed property in the immediate vicinity. It has still a bearing as regards the date of acquisition and the physical proximity to the property which was acquired. The land owners were relying on acquisition of property in Ex. A5, which was with reference to a municipal park, which the Reference Court was actually making a specific reference about its proximity to the acquired land but rejected it on the ground that the Sirhind Canal cut off the thickly populated area of Bathinda town from the other portion of the canal. As a matter of fact, the Supreme Court in National Fertilizer''s case (supra) has actually relied on the valuation given for the property acquired for the municipal park only and it only means that the Supreme Court was actually discarding the kind of reasoning, which has been employed by the Reference Court. The valuation of the property which was acquired for municipal park itself was taken as the basis for fixing the valuation of property for NFL. Even making provision for the fact that it was with reference to well developed land, I would make a deduction of 20% on the value and take the valuation as Rs. 141/- per square yard. This would require to be reworked again in the context of determination of valuation as made by the Supreme Court with reference to notification of the year 1983. We are considering the case of acquisition of property on 19.07.1984 and I will, therefore, provide for a 12% escalation on the same and take the value at Rs.

157.69 say Rs. 158/- per square yard. This, in my view, would be appropriate and just and the valuation already made by the Reference Court would, therefore, require to be modified and enhanced as above.

4. All the appeals filed by the land owners would require to be allowed for making provision for enhancement in the manner referred to above and the appeals filed by the State questioning the assessment already made would require to be dismissed.

5. The compensation as enhanced would also attract benefits of solatium and interest on the additional amount as provided by the Land Acquisition Act as amended in the year 1984. Learned Senior Counsel for the appellants also seeks for a direction that the compensation assessed shall be deposited and disbursed in the manner provided by the Supreme Court in Sabhia Mohammed Yusuf Abdul Hamid Mulla (D) by L.Rs. and Others Vs. Special Land Acquisition Officer and Others, . I reproduce the last para of the judgment which shall be treated as forming part of this order.

(i) Within one month from today, the Special Land Acquisition Officer shall depute an officer subordinate to him not below the rank of Naib Tehsildar or an equivalent rank, to get in touch with the landowners and/or their legal representatives and inform them about their entitlement to receive the balance amount of compensation.

(ii) The concerned officers shall instruct the landowners and/or their legal representatives to open savings bank account in a nationalized or scheduled bank, in case they already do not have such account.

(iii) The account numbers of the landowners and/or their legal representatives should be furnished by the concerned officer to the Land Acquisition Officer within a period of one month.

(iv) Within next one month, the Special Land Acquisition Officer shall deposit the amount of compensation along with other statutory benefits in the bank accounts of the landowners and/or their legal representatives in the form of account payee cheques.

6. The appellants have not paid the full court fee as determined and seek for time for making good the deficiency in payment of court fee. The deficiency of court fee shall be made good by the land owners within a period of four months and a decree will be drawn up on such payment. The appeals and cross objection filed by the land owners are allowed with costs proportionate with the amount as determined. The appeals filed by the State are dismissed.