
(2011) 08 SC CK 0060

In the Supreme Court Of India

Case No : Civil Appeal No. 7258 of 2011 (Arising out of S.L.P. (C) No. 1578 of 2007) , Civil Appeal No. 7259 of 2011 (Arising out of S.L.P. (C) No. 659 of 2007) , Civil Appeal No. 7260 of 2011 (Arising out of S.L.P. (C) No. 5447 of 2007) , Civil Appeal No. 7261 of

Chakas

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 24-08-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4, 54, 6

Citation : (2011) 3 GLH 199 : (2011) 10 JT 447 : (2011) 3 KLT 157 SN : (2011) 9 SCALE 362

Hon'ble Judges : Deepak Verma, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : L. Nageswara Rao, Navin Chawla, Gaurav Kaushik, Tushar Singh, Gagan Gupta, Pradeep Gupta, Rajeev B. Masodkar, A.K. Shagi, Parinav Gupta and K.K. Mohan, for the Appellant; Neeraj Kr. Jain Anil Grover, AAG, Kuldip Singh, Ajay Pal, Sanjay Singh, Umang Shankar, Ugra Shankar Prasad, Kamal Mohan Gupta, Pawan Sharma for B. Vijayalakshmi Menon, for the Respondent

Final Decision : Allowed

Judgement

Deepak Verma, J.—Leave granted.

2. Question as to what would be proper, adequate, just and reasonable compensation to be awarded to the Appellant for the land acquired by the Respondent State, has once again cropped up for our consideration in this and the connected appeals.

3. In this appeal, the land owner, whose land has been acquired by the State of Punjab is before us for enhancement of compensation awarded to him by the High Court and the beneficiary Respondent No. 3 M/s. Nahar Industries Infrastructure Corporation Ltd. (hereinafter shall be referred to as 'the Corporation') has preferred separate appeals for reduction of the compensation

awarded to the Appellant by the High Court. Since both set of appeals arise out of the common judgment and order pronounced by the learned Single Judge in Regular First Appeal No. 1072 of 1999 in the High Court of Punjab and Haryana at Chandigarh on 03.05.2006, they have been heard analogously and are being disposed of by this common judgment and order.

4. It may be noted that for the sake of brevity and convenience, facts of appeal arising out of SLP(C) No. 1578 of 2007 have been taken into account.

5. Short facts, shorn of unnecessary details are mentioned herein below:

Respondent No. 1 - State of Punjab, for the purposes of setting up of an Industrial Focal Point in Tehsil Rajpura District Patiala issued a notification on 13.11.1992 u/s 4 of the Land Acquisition Act (hereinafter shall be referred to as 'the Act') for acquiring 550.03 acres in villages Lalru, Jalalpur, Lehli, and Hassanpur of the aforesaid Tehsil and District. The public purpose mentioned in the same was for Industrial Focal Point. Subsequently, by issuance of another notification u/s 6 of the Act, on 08.04.1993, the aforesaid land was declared to have been acquired. Thereafter, the Land Acquisition Collector started the process of computing the amount of compensation to be awarded to the land owners. The Land Acquisition Officer pronounced his award on 12.9.1994 fixing different rates per acre for the lands of four villages. The Appellant and other land owners feeling highly dissatisfied with the amount of compensation so assessed by the Land Acquisition Officer, preferred references u/s 18 of the Act to the Civil Court at Patiala.

6. The matter was accordingly referred to the Additional District Judge, Patiala for working out the amount of compensation to be awarded to the Appellant and other such similarly situated Appellants. Both the parties led evidence before the Reference Court. On the basis of the evidence so adduced by the parties, the Reference Court was pleased to assess the value of the entire acquired land in four villages at a uniform rate and consequently held that the land owners were entitled to receive compensation of Rs. 1.5 lakh per acre, besides the individual claims made by land owners with regard to super structure, trees and other facilities available in their respective lands were also taken into consideration. The land owners were also held entitled for the statutory benefits as per the amended provisions of the Act.

7. Still not being satisfied with the amount of compensation so awarded to them, the land owners preferred appeals before the High Court u/s 54 of the Act, whereas the beneficiary Respondent No. 3 herein the Corporation also preferred appeals purportedly, for reduction of the compensation awarded to the Appellant. The Learned Single Judge heard the matters together and disposed of by the common judgment and order, which is being impugned, once again by both sides on a variety of grounds.

8. We have accordingly heard Mr. L. Nageswara Rao, Senior Advocate ably assisted by M/s Navin Chawla, Gaurav Kaushik, Tushar Singh praying for further

enhancement of compensation and Mr. Anil Grover, AAG, Punjab with Mr. Kuldip Singh and Mr. Neeraj Kumar Jain, Senior Advocate with Mr. Sanjay Singh Advocate for the Respondent Corporation at length and perused the records.

9. Certain dates material for deciding the said appeal are mentioned herein below:

1

Notification u/s 4 of the Act

Issued on 13.11.1992

For acquisition of 550.03 acres of land

2

Notification u/s 6 of the Act

Issued on 08.04.1993

3

Award of Land Acquisition Officer

Passed on 12.09.1994

4

Award of the Reference Court

Dated 07.12.1998

Amount of compensation at Rs. 1.50 lakhs per acre

5

Judgment and order of the High Court

Pronounced on 03.05.2006

Fixing the rate of compensation at Rs. 2.75 lakhs per acre.

10. Shri L. Nageswara Rao, Senior Advocate appearing for the Appellant contended before us that the High Court committed a grave error in computation of the base price on the strength of the average price worked out from the sale deeds Exh. P.1, P.2, P.3, P.8, and P.15 and further committed another grave error in deducting amounts from the same. According to him, in the process, the amount of compensation awarded is much lower than what should have been awarded. On the other hand, learned Counsel for Respondent Mr. Anil Grover, AAG, Punjab and Mr. Neeraj Kumar Jain, Senior Advocate appearing for Respondent No. 3 submitted that the Appellant has only been able to prove the market value of the land from the sale deed at Rs. 2.85 lacs per acre. He further contended that there was no mistake committed by the Court in taking out the

average price for working out the amount of compensation to be awarded to the Appellant.

11. Learned Counsel for Respondent No. 3 Mr. Neeraj Kumar Jain strongly contended before us that the Corporation has preferred appeals for deduction of the amount, primarily on the ground that more deductions should have been made than what was allowed by the High Court and in any event no case has been made out for further enhancement of amount of compensation, which is already exorbitant and higher.

12. First of all, we would like to deal with the location and potentiality of the acquired land. From the evidence of P.W 31 Charanjit Singh, Patwari of Halqa of all the four villages, it is clearly made out that all these villages are adjoining each other and form a compact block. He has further admitted that more than 80 to 85 industries near and adjoining the acquired land are already running and doing their business since long. The area acquired has been reserved for industrial purposes. He has further deposed that if the land had not been acquired, many factories would have sprung up in the acquired land. The details of the industries which are already running in vicinity have been given vividly by him. It is also not in dispute that the said land is situated on the Ambala-Chandigarh Highway.

13. The evidence of other government officials, who had appeared before the Reference Court, reflects that the land acquired have great Industrial potential as more than 80-85 big industries have already set up their factories in the close vicinity to the acquired land. They have admitted that the acquired land is situated on the main Ambala-Chandigarh Highway. From the evidence adduced by Respondent Nos. 1 and 2, it cannot be disputed that it was a valuable land for the land owners and it had great potential. Obviously, in 1992, the market value of the same, at the time of issuance of notification u/s 4 of the Act, would be much more than what has been awarded to them vide the impugned judgment.

14. However, the question which still remains for consideration is, on what basis, should the amount of compensation is to be worked out. The Appellant to prove his case with regard to market value of the land had produced many sale deeds but only relevant following five sale deeds are taken into consideration:

Exhibit No.

Dated of sale deed

Price paid

Price per acre

P.1

16.08.1990

1,20,000

3,02,157

P.2

16.08.1990

1,50,000

3,51,219

P.3

16.08.1990

1,50,000

3,51,219

P.8

20.04.1993

17,34,000

4,08,000

P.15

04.06.1990

9,75,000

2,99,041

15. The Appellant had also examined the vendors of the aforesaid sale deeds to show the genuineness and correctness of the same. The most appropriate sale deed touching the issuance of notification u/s 4 is Exh. P.8. The base price of the land per acre according to this comes to Rs. 4,08,000/-. The total area of the land so purchased was 20 Bighas and 8 biswas. Before execution of the sale deed, an Agreement to Sell dated 30.10.1992 (Exh. P.45) was executed between the vendor and vendee. As required under the law, permission was sought from the Income Tax Department which granted a Clearance Certificate Exh. P.44.

16. It is also pertinent to mention here that the land so sold covered under (Exh.P.8) sale deed neither belonged to any of the land owners nor they had any interest whatsoever in the said deed. Thus, it can safely be assumed that it was a genuine and bona-fide transaction between two parties, who had nothing to do with the acquisition of land of the Appellant. It was not executed for the purposes of creating evidence as Agreement to sell (Exh. P.45) is dated 30.11.1992, before the issuance of Notification u/s 4 of the Act. On the said date, it could not have been imagined that the adjoining land is going to be acquired shortly. The said land is almost abutting the acquired land. It is also manifest that the Agreement dated 13.10.1992 is very close to the notification

issued on 13.11.1992 u/s 4 of Act. The whole transaction executed under the Sale deed Exh. P.8 fully proves and establishes the case of the Appellant. As per this sale deed, the base price of the land would come to Rs. 4,08,000/- per acre. According to us, the correct base price would be Rs. 4,08,000/- per acre.

17. It is profitable to refer to the following judgment of this Court on this issue. (1969) 1 MLJ 45 (SC) Shri Rani M. Vijayalakshammamma Rao Bahadur v. Collector of Madras. Relevant para 2 is reproduced herein below:

It seems to us that there is substance in the first contention of Mr. Ram Reddy. After all when land is being compulsorily taken away from a person he is entitled to say that he should be given the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. It is not disputed that the transaction represented by Ex Rule 19 was a few months prior to the notification u/s 4, that it was a bona fide transaction and that it was entered into between a willing purchaser and a willing seller. The land comprised in the sale deed is 11 grounds and was sold at Rs. 1951 per ground. The land covered by Rule 27 was also sold before the notification but after the land comprised in Ex. Rule 19 was sold. It is true that this land was sold at Rs. 1096 per ground. This, however, is apparently because of two circumstances. One is that betterment levy at Rs. 500/- per ground had to be paid by the vendee and the other that the land comprised in it is very much more extensive, that is about 93 grounds or so. Whatever that may be, it seems to us to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. In any case we see no reason why an average of two sale deeds should have been taken in this case.

18. The said judgment has been considered by this Court reported in (2008) 14 SCC 745 General Manager, Oil and Natural Gas Corporation Ltd. v. Rameshbhai Jivanbhai Patel and Anr. wherein the Division Bench has considered this aspect of the matter succinctly in para 13, 14 and 15 reproduced herein below:

13) Primarily, the increase in land prices depends on four factors: situation of the land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in the area. In rural areas, unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi-urban areas, where the development is faster, where the demand for land is high and where there is construction activity all around, the escalation in market price is at a much higher rate, as compared to rural areas. In some pockets in big cities, due to rapid development and high demand for land, the escalations in prices have touched even 30; to 50% or more per year, during the nineties.

14) On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2; per annum. There is thus a significant difference in increases in market value of lands in urban/semi-urban areas and increases in market value of lands in the rural areas. Therefore, if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is, about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same.

15) Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisitions), where there is no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighborhood. The said method is reasonably safe where the relied-on sale transactions/acquisitions precede the subject acquisition by only a few years, that is, up to four to five years. Beyond that it may be unsafe, even if it relates to a neighboring land. What may be a reliable standard if the gap is of only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the "rate" of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase.

19. The Reference Court committed a grave error in deducting 50% of the value assessed by him, towards development charges and further reduced the said amount for the reasons not assigned by him. The learned Single Judge vide the impugned judgment has enhanced the amount of compensation but committed an error in fixing the base price as 2,75,000/- per acre for the acquired land, applying the doctrine of reasonable cut to the average price worked out by him at Rs. 3,42,527/- per acre. We do not approve of the reasoning's adopted either by the reference Court or by the High Court. How much amount is to be deducted from the base price would depend on various facts.

20. As mentioned hereinabove, in the case in hand the bulk of the land that is almost 525 acres has been given to Respondent No. 3, the Corporation for setting up its own industry and other infrastructure thereon. Thus, the lands likely to be used towards roads, sewage and other such facilities would be minimum as most of the vacant land would be utilised by Respondent No. 3 for its own benefits.

21. Needless to say, once the industry is set up, it would be for the financial

benefit and gain of Respondent No. 3 year after year. Thus, looking to the matter from all angles, Respondent No. 3 - Corporation would be a great beneficiary at the cost of depriving the Appellant - land owner of his sole livelihood of agriculture.

22. Therefore, it is neither desirable nor proper to deduct more than 10% of the amount in the base price fixed by us at Rs. 4,08,000/-. We accordingly do so.

23. The question with regard to the deduction to be made also stands settled by this Court in *Atma Singh (died) through LRs. and Others Vs. State of Haryana and Another*, . The relevant portion thereof are reproduced herein below:

14) The reasons given for the principle that price fetched for small plots cannot form safe basis for valuation of large tracts of land, according to cases referred to above, are that substantial area is used for development of sites like laying out roads, drains, sewers, water and electricity lines and other civic amenities. Expenses are also incurred in providing these basic amenities. That apart it takes considerable period in carving out the roads making sewers and drains and waiting for the purchasers. Meanwhile the invested money is blocked up and the return on the investment flows after a considerable period of time. In order to make up for the area of land which is used in providing civic amenities and the waiting period during which the capital of the entrepreneur gets locked up a deduction from 20% onward, depending upon the facts of each case, is made.

15) The question to be considered is whether in the present case those factors exist which warrant a deduction by way of allowance from the price exhibited by the exemplars of small plots which have been filed by the parties. The land has not been acquired for a housing colony or government office or an institution. The land has been acquired for setting up a sugar factory. The factory would produce goods worth many crores in a year. A sugar factory apart from producing sugar also produces many by-products in the same process. One of the by-products is molasses, which is produced in huge quantity. Earlier, it had no utility and its disposal used to be a big problem. But now molasses is used for production of alcohol and ethanol which yield lot of revenue. Another by-product bagasse is now use for generation of power and press mud is utilized in manure. Therefore, the profit from a sugar factory is substantial. Moreover, it is not confined to one year but will accrue every year so long as the factory runs. A housing board does not run on business lines. Once plots are carved out after acquisition of land and are sold to public, there is no scope or earning any money in future. An industry established on acquired land, if run efficiently, earns money or makes profit every year.

The return from the land acquired for the purpose of housing colony, or offices, or institution cannot even remotely be compared with the land which has been acquired for the purpose of setting up a factory or industry. After all the factory cannot be set up without land and if such land is giving substantial return, there is no justification for making any deduction from the price exhibited by the

exemplars even if they are of small plots. It is possible that a part of the acquired land might be used for construction of residential colony for the staff working in the factory. Nevertheless, where the remaining part of the acquired land is contributing to production of goods yielding good profit, it would not be proper to make a deduction in the price of land shown by the exemplars of small plots as the reasons for doing so assigned in various decisions of this Court are not applicable in the case under consideration.

24. In the light of the aforesaid contention and taking cue from the settled position of law decided by this Court in the aforesaid matters, we are of the firm opinion that the base price has to be fixed @ Rs. 4,08,000/- per acre. Keeping in mind that more than 525 acres has been given to Respondent No. 3 - Corporation, which in turn has set up its factory, a deduction of 10% on the aforesaid amount would be reasonable. Needless to say on the aforesaid amount, the Appellant would be entitled for statutory benefits as mandated under the amended provisions of the Act. This appeal and the connected appeals filed by land owners are hereby allowed and the appeals filed by Respondent No. 3 are dismissed.

25. The Reference Court is hereby directed to recalculate the amount of compensation to be awarded to the Appellants and all such other land owners whose lands have been acquired in the light of the direction as contained hereinabove and to pay them the remainder amount within a period of 2 months from the date of communication of this order.

26. For the foregoing reasons, this and the connected appeals preferred by land owners are hereby allowed and those filed by the Corporation are dismissed with costs throughout. Counsel's fee quantified at Rs. 10,000/- in each Appeal.