
(2008) 02 P&H CK 0235
In the Punjab And Haryana At Chandigarh

Daya Nand and Others

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 28, 4, 6

Citation : (2008) 151 PLR 38 : (2008) 2 RCR(Civil) 621

Hon'ble Judges : Vijender Jain, C.J; Kanwaljit Singh Ahluwalia, J

Bench : Division Bench

Judgement

Vijender Jain, C.J.—For establishment of new grain market, construction of Staff Quarters, Rest House, Gadda Sheds and office building at Meham. Government of Haryana issued a notification u/s 4 of the Land Acquisition Act, 1894 (for short "the Act") on 8.10.1985 followed by another notification u/s 6 of the Act on 12.6.1986. These notifications were issued for acquiring 37 acres 6 kanals and 8 marlas of land in Meham, District Rohtak. However, in actual 24 acres 5 kanals and 19 marlas of the land was acquired and to this effect Land Acquisition Collector issued the award. In his award dated 30.9.1987 learned Land Acquisition Collector, Rohtak, depending upon the nature of land awarded following compensation to the land owners:

Nehri/Chahi land Rs. 25,000/- per acre Gair Mumkin Rs. 28,000/- per acre Barani Land Rs. 15,000/- per acre Not satisfied with the amount of compensation, references u/s 18 of the Act were sought for enhancement of compensation.

21 references preferred were disposed of by learned Additional District Judge, Rohtak vide judgment dated 3.2.1990, who awarded uniform rate of compensation to all the claimants at the rate of Rs. 1,44,000/- per acre.

2. Against the judgment of learned Additional District Judge, Rohtak, 21 Regular First Appeals were filed by the State of Haryana praying that the amount awarded is excessive. Claimants also filed 20 appeals praying for enhancement.

All the appeals were decided by the impugned judgment of learned Single Judge of this Court on 18.2.2000. The learned Single Judge came to conclusion that the claimants would get Rs. 3,68,000/-per acre minus 50% i.e. Rs. 1,84,000/-. 50% cut was applied for the development charges.

3. Learned Counsel appearing for the appellant has also stated at bar before us that no other Letters Patent Appeal was preferred against the judgement of learned Single Judge except the present one. During course of arguments, learned Counsel appearing for the appellants has confined his arguments only to challenge imposition of 50% cut applied towards the development charges.

4. It is not disputed that the learned Additional District Judge before arriving at the amount of compensation had already applied 1/3rd cut for small piece and further 1/3rd cut on account of fact that entire land was not abutting the National Highway. In view of this, before the learned Single Judge, State had not pressed their appeals.

5. Assailing imposition of 50% cut for development charges etc. the learned Counsel for the appellant has heavily relied upon the evidence of PW.3, PW.4 and PW.6, which have been noticed by learned Single Judge to determine location and potential of the acquired land. In the impugned judgement the following portion of evidence of PW.3 has been noticed:

...Their evidence is material. PW.3 stated as under:

The acquired land was surrounded by roads from three sides one of which is National Highway I.T.I., College, Tehsil Campus, Bus-stand, Power House and Arya Nagar are near to this place. This place was very valuable to us. At the time of acquisition the rate of the land was Rs. six lakhs per acre. Now the land near to our land is being sold from Rs. 500/-per square yard to Rs. 1,500/-per square yard. Due to this acquisition my land has been bifurcated into pieces and on this amount the value of my remaining land has been reduced.

6. After discussing the evidence of witnesses, the following findings have been returned by the learned Single Judge:

...The inescapable conclusion from the above discussion is that the acquired land has a reasonable potential and good location. Once the land in question is of that kind and even the part of the land is stated to be within Municipal Limits, it will be difficult for the Court to approve deduction of such high percentage. Reverting back to the sale deeds on record, the learned Reference Court could not have taken into consideration any other sale deeds except exhibit P.5 and PW.5/A. Other documents were inadmissible in evidence, as already noticed. The average of exhibits P.5 and PW5/A comes to Rs. 3,68,000/-per acre. Exhibits P.5 and PW.5/A, otherwise give a reasonable basis for determination of the final amount to be paid to the claimants. In fact, exhibit PW.5/A, is nearly more than one year prior to the notification and would be a safe guide, while P.5 relates to 1982, which show increase in price over 21/2 years.

7. It has been contended before us that once it has come in evidence that land abuts Delhi-Hisar Road and there is a bus stand near the acquired land along with industrial institute, built-up shops, presence of petrol pump and abadi of Arya Nagar, then it has to be assumed that urbanisation and development of the acquired land had already taken place.

8. We are conscious that the land had been acquired for the establishment of grain market. In close vicinity shops had already been built. There is a petrol pump, industrial institute and already developed

9. Arya Nagar around the acquired land. Once 1/3rd cut had already been applied for a small piece of land, and 1/3rd cut on account of entire land not abutting the National Highway applying, further 50% cut for the development charges, in our opinion will be excessive. The cut of 50% for development charges would have been justified had it been applied for a large track of land.

10. It has been brought to our notice that for acquisition of land which constituted a large track of 84.23 acres, the learned Single Judge, who had applied in the present case 50% cut, in that case had applied cut of 20% as development charges. That has been reported in *Shanti Devi v. State of Haryana* (1999) 2 PLR 640 wherein it was observed as under by the learned Single Judge:

25. Applying the above well settled principles and the view expressed by this Court in R.F.A. No. 2382 of 1997 titled *Union of India (UOI) Vs. Dr. Balbir Singh*, where the Court, after discussing at great length the judgement of the Hon'ble Supreme Court observed as under:

I have already dealt in great detail the reasons as to why the land in question cannot be termed as a developed area for applying the principle of cut, it also needs to be noticed that the learned Additional District Judge, Sirsa, has not given any specific finding in the entire judgement that the area in question is a developed area as commonly accepted. Haphazard development would be of some consequence, but could no way be equated to a fully developed area. The purpose for which the land is acquired, the relevant records declaring the entire land as agricultural land and the fact that the sale deeds relate to comparatively small pieces of land would fully justify the application of the element of cut to the aforesaid amount. It has been held above that 20 per cent cut on uniform basis would be a fair determination of the market value of the land in question.

26. Thus, the ends of justice would be met if the cut of 20% is applied to this determination of the value.

11. The above said decision was made subject matter of Civil Appeal No. 7139 of 2001 *Kasturi and Ors. v. State of Haryana* 2002 (2) PLJ 490. The Hon'ble Apex Court held that for a large track of land 1/3rd cut should be applied but affirmed decision of this Court applying 20% cut and held as under:

14. On facts and in the light of the legal position emerging from the various decisions referred to above, it is not possible for us to say that cut of 20%

adopted by the learned Single Judge as affirmed by the Division Bench in the impugned judgement is wrong or unsustainable. It appears to us having regard to facts and circumstances of the case that the High Court has applied cut of 20% as against the normal 1/3 deduction. We find that the High Court was right and justified in doing so.

12. In the present case, since the area acquired was small measuring 24 acres and to which already 1/3rd cut being small piece and further 1/3rd cut on the ground that entire land is not abutting National Highway had been applied, 50% cut for development charges etc. cannot be justified. In the impugned judgement, learned Single Judge has concluded that the land has reasonable potential, good location and is stated to be in municipal limits, therefore, it is difficult to approve deduction at high percentage.

13. Having determined the potential and good location and found that part of land is said to be in the Municipal Limits and thereafter the imposition of price deduction of 50% on account of development charges cannot be justified. Hence, we accept the price determined by the learned Single Judge to be Rs. 3,68,000/- per acre, in our opinion minus 20% as development cut will be just and adequate as the land acquired does not constitute to be a large track, and has also been approved by Hon"ble the Apex Court in Kasturi and Ors." case (supra).

14. Therefore, appellants in the present appeal will be entitled to Rs. 3,68,000/- per acre minus 20% i.e. Rs. 73,600/-. Resultantly, in the present appeal, it is held that the appellants who are claimants would be entitled to Rs. 2,94,400/- per acre with all statutory benefits as provided u/s 23(1-A), 23(2) and 28 of the Act.

15. With these modifications, the present appeal is disposed off.