(2010) 10 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No''s. 7444, 7949, 7977, 8319, 15779, 18182, 20284, 20288, 20289 of 2006, and 18162 of 2007

Dr. Jagdev Inder Singh — APPELLANT

Vs

The President, Land Acquisition Tribunal, Improvement Trust and Others — RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23(1)A, 23(2), 28, 4
Punjab Town Improvement Act, 1922 — Section 24, 28(2), 36, 41

Citation : (2011) 161 PLR 416

Hon'ble Judges : Jasbir Singh, J;Augustine George Masih, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Augustine George Masih, J.—Civil Writ Petition Nos. 7977 of 2006, 7444 of 2006, 7949 of 2006, 8319 of 2006, and 18162 of 2007 have been preferred by the Petitioners (hereinafter referred to as ''the Claimants''), whose lands stand acquired by the Amritsar Improvement Trust, challenging the Award dated 22.12.2005, passed by the Land Acquisition Tribunal (hereinafter referred to as ''the Tribunal''), by claiming enhanced compensation, whereas Civil Writ Petition Nos. 15779 of 2006, 18182 of 2006, 20284 of 2006, 20288 of 2006 and 20289 of 2006, have been preferred by the Amritsar Improvement Trust, challenging the same Award with a prayer for reducing the amount of compensation granted by the learned Tribunal. As these writ petitions arise from the same Award, these are being taken for hearing and are being decided by a common Order.

2. Briefly, the facts of the case are that the Amritsar Improvement Trust (hereinafter referred to as ''the Improvement Trust'') framed a development scheme known as ''Development Scheme for Ajnala Road area'' u/s 24 read with Section 28(2) of the Punjab Town Improvement Act, 1922 (hereinafter referred to as ''the Improvement Act'') for an area measuring 323 acres, situated beyond the municipal limits, but within the local area of the Improvement Trust. A

notification u/s 36 of the Act was issued on 21.01.1972, which corresponds to Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as ''the Acquisition Act''). The State Government considered the scheme as submitted by the Improvement Trust and sanctioned the Development Scheme. A notification u/s 41 of the Act was issued on 18.12.1972. The details and locations of the land was also notified therein. The Claimants, whose lands fell in that Scheme, filed their objections before the Land Acquisition Collector. On consideration of the same, the Land Acquisition Collector passed the Award dated 03.10.1973. Rs. 8 per sq. yd. was granted for the land situated on the Circular Road, falling in belt ''A'' and Rs. 2.50 per sq. yd. for the land situated in belt ''B''. The compensation was also granted for the trees and super structures thereon. The claim for solatium was rejected.

3. The Claimants feeling aggrieved by the Award, passed by the Collector, preferred a reference u/s 18 of the Acquisition Act before the Tribunal, constituted under the Improvement Act, for enhancement of compensation. The reference was instituted on 02.05.1974, which culminated in the passing of the Award dated 22.12.2005 by the Tribunal. Vide this Award, the market value of the land at the time of acquisition was assessed at Rs. 12 per sq. yd. The benefits of the amended provisions of Section 23(2) and Section 28 of the Acquisition Act was also granted to the Claimants. Belting by the Collector was not accepted and the entire acquired land was assessed at the same uniform rate. It is this Award dated 22.12.2005, passed by the Tribunal, which has been challenged by the Claimants as well as by the Improvement Trust.

4. Counsel for the Claimants submits that the learned Tribunal, although, has held that the land is not an agriculture land, yet has not assessed the correct market value of the land and due weightage has not been given to the location of the land. The sale instances of this very land has not been properly appreciated and unreasonable cut of 40% has been applied to the average price, as assessed by the learned Tribunal. He contends that the acquired land is prime land, which is situated just outside the municipal limits. It is surrounded by developed area. Green Avenue colony is situated in the vicinity of the land, which was developed by the Improvement Trust itself. The plots therein have fetched rates between Rs. 96 to 180 per sq. yd. in an auction held by the Improvement Trust on 19.12.1972. In Basant Avenue, which is again adjacent to the acquired land, the plots were sold in an auction held on 25.03.1972 @ Rs. 95 to 146 per sq. yd. The Government College, District Courts, office of the District Education Officer, and Police Colony are on the other side of the road of the land acquired, which falls on two roads. On one side is Ajnala Road and on the other side is Circular Road. Across the Ajnala Road are District Courts, Government College, office of the District Education Officer, and Police Colony and Green Avenue is on the Circular Road and, thus, the land is situated adjacent to the well developed area and, therefore, had great potentiality of development into a residential colony. The properties were purchased by many Claimants for building up residential houses and, as a matter of fact, some residential houses were also constructed and

people were residing therein. This shows that the potentiality of the land into development of a residential area was being recognized by the people and, therefore, the amount, as assessed by the learned Tribunal, is insufficient and not based on the correct market value of the land. He contends that the learned Tribunal has not taken into consideration the Awards of the nearby land passed by the Courts, which was earlier acquired by the Improvement Trust. He submits that as Tribunal, vide his Award dated 19.07.1979 (Ex.A- 61), had granted a rate of Rs. 80 per sq. yd. for the land in Rani ka Bagh area, wherein the Collector had passed the Award on 06.11.1969. Ex. A-62 was the Award dated 02.12.1972, passed by the Tribunal, pertaining to the Government College, which is hardly at a distance of 100 yds. from the junction of the Court on the other side of Ajnala Road, where the lands of the Claimants are situated, compensation was assessed at Rs. 35 per sq. yd. Reliance has been placed by counsel for the Claimants upon the judgment of Hon''ble the Supreme Court in the case of Attar Singh and Another Vs. Union of India (UOI) and Another, to project-the factors relevant to determine the Market value of the land. He further placed reliance upon Division Bench judgment of this Court in the case of Hissar Improvement Trust, Hissar v. The President, Tribunal Improvement Trust, Hissar, and Ors., 2 2006 (1) PLJ 663 to contend that the price fetched by small plots of land can be accepted as a market value of the land, which had been acquired adjacent to a developed colony.

5. Counsel for the Claimants submits that the Claimants would be entitled to additional compensation as per Section 23(1A) of the Acquisition Act, which has been denied to them. He on this basis contends that the Award passed by the Tribunal, deserves to be modified and the compensation enhanced.

6. On the other hand, counsel for Respondent submits that the belting of the total area was rightly done by the Collector into ''A'' and ''B'' and the amount granted by him was as per the market rate. Although, the location of the land, as projected by counsel for the Claimants, could not be denied by counsel for Respondent. However, he submits that the instances of sales which have been cited by the Claimants, pertain to a very small area whereas the acquired land is a large chunk of land. The said sale instances, therefore, deserve to be ignored. He contends that the Claimants would not be entitled to the benefit of Section 23(1A) of the Acquisition Act in the light of the judgment of Hon''ble the Supreme Court in K.S. Paripoornan v. State of Kerala and Ors., 3 AIR 1995 Supreme Court 1012. He, therefore, prays that the market value, as assessed by the Collector be restored by setting aside the Award passed by the Tribunal.

7. We have heard counsel for the parties and have gone through, the records of the case including the site plan.

8. The land in question is situated on two main roads, one is Ajnala Road and other is Circular Road. It is parallel to the municipal boundary line which ends on the Circular Road and is on the junction where five roads meet including Ajnala Road and Circular Road, which runs parallel to the land of the Claimants on two

sides. Thus, the land is situated where two sides are falling on the roads across which developed area was in existence at the time of acquisition. It is not in dispute that Green Avenue, which is across the road on the Circular Road to the land acquired was developed by the Improvement Trust. On the other side of Ajnala Road of the land acquired, Government College, District Courts, office of the District Education Officer, and Police Colony are situated, this area is also developed area. Therefore, it can safely be said that the land had potentiality for development into residential area. This is further fortified by the fact that most of the Claimants barring two or three of them, owned land measuring a few Marias to 1.5 Kanals. It is also not in dispute that, as a matter of fact, residential houses stood constructed by some of the Claimants on their lands; Residential house of Jagdev Inder Singh which is situated on the junction of the Road, stood exempted from acquisition on his filing objections. Thus, the learned Tribunal has rightly held it not to be merely an agriculture land and has also rejected the belting done by the Collector and assessed uniform rate for the entire acquired land.

9. Now, the question is as to whether the Tribunal has correctly assessed the market value of the acquired land or not ?

10. The market value of the acquired land is dependent upon various factors. It can be nature and quality of the land, location which would include proximity thereof to road, adjacent and surrounding area whether developed or un-developed, value of the adjacent land and its use etc. The market value can also be assessed on the basis of sales instances of the surrounding areas. The proximity of such sales instances to the date of acquisition, the area of the land etc. The development potentialities of the land is also one of the factors, which determines the market value of the land. When a large area is acquired and generally when sale instances of only small area of land have been produced in evidence, sale prices deserve to be moderated to come to the correct market value of the land. In doing so, principle of average of the sale deeds has to be given effect to and applied and thereafter, reasonable cut can be imposed on this average price depending on the facts and circumstances of each case keeping the above mentioned factors in mind.

11. In the case in hand, the sales instances, which have been taken into consideration by the learned Tribunal are either of the land of the Claimants whose lands have been acquired or part of it has been acquired or of the adjacent land. The sales instances were also of the period immediately before the acquisition. We are in agreement with principle adopted by the Tribunal for determining the average price, although the figure is incorrect. Taking into consideration the maximum rate and the minimum rate of the sales instances of very small area, that was, Rs. 13 per sq. yd. and Rs. 40 per sq. yd. as also maximum area of 1650 sq. yds. which was Rs. 21 per sq. yd., the average thereof comes to Rs. 24.66 per sq. yd. and not Rs. 23 per sq. yd. As arrived at by the Tribunal.

12. Keeping in view the developed surrounding area and the location of the land, which factum could not be disputed by counsel for Respondent, the cut of 40% applied to the case in hand, is not justified and is on the excessive side. The judgments relied upon by the Tribunal for imposing such cut, were cases where sale price of auctioned land in the developed area was to be taken into consideration for determining the market value of the un-developed area, but here the sales instances are of the same land and of the same period when the land was to be acquired. We are of considered view that to moderate the rates of the sales instances which are of small area, while the land acquired is a large area, cut of 25% should have been applied by the Tribunal. When applying the same, the market value of the land would come to Rs. 18.50 per sq. yd.

13. The Awards relied upon by counsel for the Claimants firstly pertain to land which fell within the Municipal limits and secondly the areas of the acquired land was not big. The instances of auction sales of Green Avenue and Basant Avenue were of the developed area and again within the Municipal limits, therefore, none of these could be determinative of the market value of the land especially when instances of sales of close proximity to the date of acquisition of the acquired land itself were on record. Thus, no benefit can be granted to the Claimants of these Awards and auction sales.

14. As regards the contention of counsel for the Claimants that they are entitled to benefit u/s 23(1A) of the Acquisition Act, suffice it to say that this claim cannot be granted to the Claimants in the light of the judgment of Hon''ble the Supreme Court in the case of K.S. Paripoornan (supra), wherein it has been held that additional compensation u/s 23(1A) of the Acquisition Act, is not payable to the Claimants, where the Award had been passed by the Collector before 30.04.1982. In the case in hand, the Award was passed by the Land Acquisition Collector on 03.10.1973, which is prior to 30.04.1982. Accordingly, the Claimants are not held entitled to the benefit u/s 23(1A) of the Acquisition Act.

15. In view of the above, the writ petitions preferred by the Claimants are allowed. The Claimants are held entitled to a compensation of Rs. 18.50/- per sq. yd. in respect of the acquired land. They shall also be entitled to all the statutory benefits as granted by the learned Tribunal. However, the writ petitions preferred by the Improvement Trust are dismissed.

16. Photocopy of this Order be placed on the file of each connected case.