(2003) 09 P&H CK 0085

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 621 of 1983

Fateh Chand and another APPELLANT

Vs

State of Haryana and others RESPONDENT

Date of Decision : 17-09-2003

Acts Referred:

Citation : (2004) 2 LJR 18 : (2004) 1 RCR(Civil) 123

Hon'ble Judges : M.M.Kumar, J

Advocate : Shri Amarjit Markan, Advocate.Shri N.K. Joshi, AAG Haryana.For the Respondent Nos. 2 and 3, Shri Dinesh Nagar, Advocate., Advocates for appearing Parties

Judgement

M.M. Kumar, J.

1. This is claimants'' appeal filed under Section 54 of the Land Acquisition Act, 1890 (for brevity `the Act'') challenging judgment dated 18.3.1983 passed by the Addl. District Judge, Jind, awarding Rs. 100/ per sq. yard to the claimantappellants as the market value of the acquired land.

2. Brief facts of the case are that a notification under Section 4 of the Act was issued on 9.6.1976 for the purposes of extension of Children Park. Total land acquired was 3 kanals situated at GohanaJind road at Jind. Award was announced by the Arbitrator on 16.11.1978 @ Rs. 40/ per square yard. The claimantsappellants filed application under Section 18 of the Act alleging that the land was within the municipal limits and as the abadi of the town was developing towards the said of this land, the land had potentials to be developed into commercial area because it abutted the JindGohana Road and as such it was very valuable. The aforementioned claim was contested by the respondents. On Issue No. 1, concerning the market value of the land in dispute at the time of notification under Section 4 of the Act i.e. 9.6.1976, the ld. District Judge found that the rate recommended by the Collector has been discarded because no reason has been given by the Tribunal constituted under the Punjab Town Improvement Act 1922 in his award dated 26.2.1981. Accordingly, it accepted

the recommendation of the Collector made in Ex. P.7 and awarded Rs. 100/ per sq. yard. Moreover, no evidence was led to show that the aforementioned rate was erroneous. However, ld. Addl. District Judge refused to take into consideration the sale instances Ex. P.2 and P.3 dated 15.3.1976 on the ground that the aforementioned instances were in respect of land concerning small pieces of 16 sq. yards., Ex. P.2 and P.3 are the sale deed dated 15.3.1976 and 16 sq. yd. of land has been sold for Rs. 3,000/. The views of the ld. Addl. District Judge in this regard read as under :

"The other instance produced by claimants are copies of two sale deeds Ex. P.2 and P.3. Both the sale deeds are dated 15.3.1976 and vide the same an area of 16 Sq. Yards was sold for Rs. 3,000/. In the sale deed Rs. 2,500/ are shown to have been paid before the Sub Registrar. The land sold is part of Khasra No. 174/30, while the land acquired is in khasra No. 174/29. The copy of Aks Shejra has also been placed on the file as Ex. P.9. Perusal of Ex. P.9 shows that only JindGohana Road intervenes in between the land acquired and the land of Khasra No. 174/30. The counsel for the claimants contended before me that these instances be relied upon to hold the market value of the acquired land at Rs. 187/ per square yard. I do not agree with his contention because the above instances are also about sale of small plot of only 16 square yards, while the land acquired is about 3 kanals."

3. The other sale instances Exs. P.4, P.5 and P.6 which were dated 27.3.1979, 8.2.1980 and 8.2.1980 respectively were discarded on the simple ground that they were subsequent to the date of notification under Section 4 which was issued on 9.6.1976.

4. Shri Amarjit Markan, learned counsel for the claimantappellants has argued that a perusal of Ex. P.8 i.e. site plan would show that the land acquired is commercial in nature and the sale instances of small portions cannot be discarded. According to the learned counsel shops have been built on the site beside the aforementioned khasra numbers and it shows that the land is bound to be sold in small pieces as a shop of about 200 sq. yds. would be sufficient in a commercial market. In support of his submission, the learned counsel has placed reliance on a judgment of this Court in the case of State of Punjab v. Lila Wati, 1981 Current. L.J. 95. Learned counsel has further contended that the land acquired is situated within the municipal limits and near the abadi. In such a situation, the sale instances available would be only of small pieces of land and highest rate which has been mentioned in the sale instances Exs. P.2 and P.3 should be awarded. Learned counsel has also pointed out that there was no justification for the Addl. District Judge to ignore the sale instances showing the rate of land at Rs. 187/ per sq.yard. Learned counsel has also submitted that the sale instances Exs. P.4 to P.6 cannot be discarded merely because they are subsequent to the notification under Section 4 of the Act and the same can be kept in view for the purpose of assessing the potentials of the land.

5. After hearing the learned counsel, I am of the considered view that this appeal

must succeed. The sale instances relied upon by the claimant appellants with their dates, area sold and the rate are as under :

Ex.

date

area

amount

Per Sq.Yd.

Ex. P.2

15.3.1976

16 Sq.yd

3000/

187.30

Ex. P.3

15.3.1976

16 Sq.yd.

3000/

187.30

(Part of Khas. No. 174/29. Acquired from land comprised in Khasra No. 174/30)

Ex. P.4

27.3.1979

16 Sq.Yd.

5000/

312.50P.

Ex. P.5

8.2.1980

22 Sq.Yd

8000/

363.63

Ex. P.6

7.2.1980

22 Sq.Yd.

7000/

318.18

6. A perusal of the above table shows that sale instances Exs. P.2 and P.3 are in respect of Khasra No. 174/30 and the land acquired is from Khasra No. 174/29 which are almost adjacent to each other as is apparent from the perusal of Aks Shejra Ex. P.9. The land acquired and the sale instances Ex. P.2 and P.3 are although away from each other yet are very near. Moreover, the sale instances Ex. P.2 and P.3 are about three months prior to the issuance of notification under Section 4 of the Act. It is also undisputed that the land was not away from the abadi and fell within the municipal limits. Therefore, it was not proper for the ld. Addl. District Judge to ignore those sale instances. If the sale instances of the land adjacent are available then it would help to conclude that the market value of the land acquired would be similar especially when the sale is around the same time when the notification under Section 4 of the Act has been issued. It is true that evidence with regard to smaller pieces of sale instances should be discarded but at the same time such sale instances can furnish good proof of the market value of the land. Even the subsequent sale instances may furnish some indication about the potentials of the land acquired. The market value of the land, according to sale instances Ex. P.2 and P.3 is Rs. 187.50 and according to sale instances of 199798 Exs. P.4, P.5 and P.6 is over Rs. 300/. However, the assessment made by the Collector is Rs. 100/ only. In these circumstances, the guidelines provided by the Supreme Court even with regard to post acquisition sale instances is that price at which the adjacent land with similar advantages and potentials have been bonafide sold after about 5 months of the issuance of notification under Section 4 of the Act in respect of the land acquired can furnish the best evidence for fixing the market value. These observation have been made by their Lordships in Mehta Ravindrarai Ajitrai v. State of Gujarat, 1989(2) RRR 243 (SC) : (1989) 4 SCC 250 and the same reads as under :

"The market value of a piece of property for purposes of Section 23 of the Land Acquisition Act is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arm''s length. Prices fetched for similar lands with similar advantages and potentialities under bona fide transactions of sale at or about the time of preliminary notification are the usual and, indeed the best, evidence of market value. (See Administrator General of West Bengal v. Collector, Varanasi, 1988(1) RRR 480 (SC) : (1988) 2 SCC 150."

With regard to small pieces of land, it has been observed by the Supreme Court that the same cannot be completely discarded. Such sale instances can be considered for assessing the potentialities of the land keeping in view its location and position. The aforementioned observations have been made in the case of Gulzara Singh v. State of Punjab, 1993(3) RRR 247 (SC) : (1993) 4 SCC 245.

7. Keeping in view the principles enunciated by the Supreme Court in the aforementioned judgments, it would be appropriate to assess the market value of the land at the time of acquisition by referring to sale instances Exs. P.2 to P.6. There is a valid objection concerning Exs. P.2 and P.3 on the ground that these are in respect of small pieces of land measuring 16 sq. yards whereas the land acquired was 3 kanals. Objection raised regarding small pieces of land have to be considered by keeping in view the location of the building and its potentialities. A perusal of Aks Shejra and the site plan Ex. P.9 and P.8 clearly shows that adjacent to the area around the land acquired is a portion of the area where shops have been constructed. Had the land acquired remained with the claimantappellants, it would also have been converted into shops. On the one hand sale instances which comprised of small areas may be considered by showing the higher price but at the same time, a comparison between the sale instances in respect of the period before acquisition and post acquisition would show the marked increase in the price which is almost twice. Before acquisition even in respect of small area the market value was Rs. 187.50 per. sq. yard and after acquisition in 1980 it was Rs. 363/ per sq. yard or Rs. 312/ per sq. yard. Therefore, the question for determination is would it be fair to grant Rs. 100/ per sq. yard as compensation by taking the market value on 9.6.1976. The answer to this question, to my mind, is in the negative. There has to be enhancement after taking into consideration all the factors that the land is situated near to the abadi. within the municipal limits, and the potentials of the land as reflected by sale instances Exs. P.4 to P.6.I, however, impose a cut of 20 percent on the sale instances Ex. P.2 and P.3 which are dated 15.3.1976 and determine the market value of the land at Rs. 150/ per sq. yard. Claimant appellants shall be entitled to the enhanced amount along with all the statutory benefits.

