
(1997) 03 P&H CK 0029

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 568 of 1978

Ganesh Flour Mills Co. Ltd.

APPELLANT

Vs

The State of Haryana and Another

RESPONDENT

Date of Decision : 31-03-1997

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Citation : (1997) 117 PLR 355 : (1997) 3 RCR(Civil) 395

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : Satish Sibal and Deepak Sibal, for the Appellant; H.S. Hooda, A.G. and Mahavir Sandhu, for Respondent No. 1, Ashok Aggarwal and Rajinder Goyal, for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—In this Regular First Appeal arising out of acquisition of land by the State of Haryana, the obvious prayer is for correct assessment of the market value of the acquired land at the time of its acquisition and consequently to enhance it from the one already determined by the Land Acquisition Collector and the Additional District Judge, Sonapat.

2. Brief facts of the case reveal that the Government acquired 143 Bighas and 5 Biswas of land in village Kalupur, District Sonapat and 3 Bighas in village Patti Musalmanan again in District Sonapat vide a notification issued u/s 4 of the Land Acquisition Act on 7.6.1966. This notification was followed by declaration u/s 6 of the Land Acquisition Act on 25.11.1967. The land was acquired for public purpose, namely, for establishing Hindu Kanya Vidalya and Hindu College of Girls. The Land Acquisition Collector vide his award dated 3.4.1969 assessed the market value of the acquired land at the rate of Rs. 2500/- per Bigha. Fifteen per cent solatium was also given. The appellant-claimants sought reference u/s 18 of the Land Acquisition Act and claimed Rs. 45/- per square yard as correct and fair market value of the land at the time of acquisition. The matter came before the

Additional District Judge who vide his judgment dated 27.1.1978 gave a marginal increase and fixed the market value of the land at Rs. 2750/- per Bigha. The increase of only 10 per cent of the value of the land already fixed by the Land Acquisition Collector was given on the sole ground that the land subject matter of acquisition had potential of being developed into an industrial area. The learned Additional District judge for giving 10 per cent increase on account of its potential for being used as industrial area relied upon the judgment of Madhya Pradesh High Court in Collector, Durg Vs. Saroj Kumari, .

3. In this appeal preferred by the claimant-appellant it has been basically urged by Mr. S.C. Sibal, the learned Senior Advocate that there were number of sale instances which which were comparable and relevant and which ought to have found consideration by the Additional District Judge but were all rejected on wholly untenable grounds. If such sale instances were relied upon, the market value of the land could not be assessed below the claim of the appellant, further contends the learned counsel. Before the sole contention of the learned counsel is examined, it would be useful to mention that on the strength of the evidence that was led by the claimants, the learned Additional District Judge came to a firm conclusion that the land subject matter of acquisition has potential of being used as an industrial area. The finding recorded by the Additional District Judge, Sonapat, reads thus:-

"To the above facts is also to be added the fact that the land was once upon a time used for an Industrial purpose, namely, for a sugar factory. I am, thus, of opinion that the land being situated adjacent to the Industrial estate is suited for Industrial purposes only and not for a residential purpose.

There are number of sale instances that the claimants relied upon but what is being argued before this Court at this stage is that there was no question for the Court to have rejected sale instances mentioned in Clausess (a), (b), (c), (d) and (e) in paragraph 17 of the judgment of the Additional District Judge. The said instances are reproduced below;-

"(a) Hari Ram AW.14 purchased 11 sq. yards of land for Rs. 4000/- on 3.3.1965 by a registered sale deed Ex.PW-14/1. This plot is 1-1/2 furlong from the acquired land and abuts the main road and is market which is used for residential purposes.

(b) The next document is the sale deed Ex.PW.15/1 dated 2.6.1965 by which Chhotu Ram AW-15 purchased the plots measuring 300 sq. yards for Rs. 6000/-. This plot is at a distance of one mile from Ganesh Flour Mills i.e. the acquired land and was purchased for construction of shops. The road in front of the plot is 66 feet in width and is in the main bazar.

(c) Hukam Chand AW.5 purchased 320 sq. yards of land for Rs. 6000/- by sale deed dated 2.7.1965 (Ex.AW-5/1). This plot is situated on the Rohtak-Sonapat road by the side of a number of shops.

(d) Janki Dass AW-1 purchased 140 sq. yards of land for Rs. 7000/- by sale deed dated 15.9.1965 (Ex.AW.1/1). This plot is two furlongs from the acquired land and adjoins his residential houses and is near the grain market. It was sold for a residential building.

(e) Mohmad Safi AW-16 purchased 31 sq. yards of land for Rs. 1200/- in 1965.

The plot is two miles away from the acquired land and adjoins the Delhi road. Mohmad Safi constructed a shop on a part of the said plot."

It may be stated that the appellant had relied upon other instances of 1966 also but inasmuch as sale instances of the year 1965 are far more comparable than the one of the year 1966, Mr. Sibal has made submissions pertaining to the sale instances mentioned above. While rejecting all the instances, Addl. Distt. Judge has observed that no assistance could be taken from sale instances as the transactions were of very small area of land and they pertained to 1965 as also the plots were not contiguous to the acquired land and they were either in residential colonies or in the commercial or other busy localities. In so far as first two reasons are concerned, namely, that the transactions are of very small areas of land and they pertain to 1965, all that requires to be mentioned is that the land under acquisition in the present case was notified in 1966 and it could not be said that the sale instances of 1965 were irrelevant as also that instances pertaining to small areas could not be simply rejected on the sole ground that these pertained to small areas. It is by now well settled proposition of law that if the sale instances are otherwise comparable and relevant, even if these are of small areas as compared to the one which has been acquired, the same can be relied. At the most a reasonable cut depending on the facts and circumstances of each case can be applied. So far as the other two grounds are concerned i.e. plots were not contiguous to the acquired land and these were either in residential colonies or in the commercial or other busy localities, I have gone through AW. 11/1 site plan, authenticity of which has not been disputed by the Counsel representing the parties that the observations of the learned Additional District Judge are factually incorrect in so far as at least two sale instances are concerned. These instances are of 15.9.1965 and 18.4.1966 : Vide sale deed dated 15.9.1965, Janki Dass purchased 140 sq. yards of land for Rs. 7,000/- The price of the land comes to Rs. 50/- per sq. yard. Vide sale deed dated 18.4.1966, Duli Chand purchased 250 sq. yard land for Rs. 13000/-. The price per sq. yard comes to Rs. 52/-. These two sale instances are of an area which is in quite close proximity to the land in dispute: These two sale instances are of land which is not located in any residential colony. If these two plots were contiguous to commercial locality so was the land subject matter of acquisition. The other sale instances of the year 1965 may not be comparable being located on road or other wise. The fact, however, remains (that these two sale instances one of the year 1965 and other of 1966 could not simply be ignored. Once, therefore, comparable sale instances were available, all that had to be seen is as to how much cut was required to be applied. While making such a calculation, some

guess work on available facts, has to be made.

4. I have heard the learned counsel representing the parties, examined the records inclusive of site plan Ex.AW-11/1. Considering that the sale instances relied upon were of small area as compared to the land subject matter of acquisition as also that these were at a distance of two furlongs, 2/3rd cut can safely be resorted to in working out the just and proper compensation. As the sale instances of the year 1965 are far more closer in proximity of the land subject matter of acquisition, same is relied upon as the governing factor in determining the market value of the land. As mentioned above, the said sale instance depicts price in the year 1965 at Rs. 50/-per sq. yard and if a cut of 2/3rd is applied it would work out to Rs. 16.66 per sq. yard. Rounding it off, the market value of the land under acquisition comes to Rs. 16.50 per sq. Yard. It is at this rate that the appellant-claimants would be entitled to get the compensation. The appellants shall be entitled to solatium at the rate of 15% per annum and other statutory benefits. It may be mentioned here that increased benefits as per amendments brought about in the Land Acquisition Act are not permissible in this case. However, whatever statutory benefits were available to the claimants prior to the amendment of the Land Acquisition Act, the appellants shall be entitled to the same.

5. The appeal is allowed to the extent mentioned above, limited to the extent that the Court-fee has been paid. At this stage, Mr. Sibal informs the Court that the Court fee has been paid working out compensation at the rate of Rs. 16/- per sq. yard and therefore, it would be at this rate that the appellants shall be entitled to receive the compensation. No order as to costs.