(1997) 04 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 1534 of 1984

Gulbir Kaur APPELLANT

Vs

Land Acquisition Collector, Punjab Urban Estates RESPONDENT

Date of Decision : 11-04-1997

Acts Referred:
Land Acquisition Act, 1894 — Section 23, 23(2)

Citation : (1997) 117 PLR 228 : (1997) 3 RCR(Civil) 555

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

Bench : Single Bench

Advocate : R.S. Bindra and Renu Bala, for the Appellant; G.S. Grewal, A.G. and A.G. Masih, A.A.G., for the Respondent

Judgement

V.K. Bali, J.—Not only for the fact that all these appeals are connected but also for the reason that the parties want all these matters to be taken together and disposed of by one order, I propose to decide all these three appeals by a common order. Before, however, facts giving rise to these appeals are noticed. it requires to be mentioned that whereas R.F.A, No. 1534 of 1984 has been filed by claimants whose poultry Farm was also acquired, R.F.A. 1631 of 1984 has been filed by the State for reducing the compensation as has been assessed by the learned trial Judge. R.F.A. 2020 of 1984 has again been filed by the claimants in whose case as well poultry Farm was acquired,

2. The facts reveal that the Government issued notification u/s 4 of the Land Acquisition Act on 5.2.1974. It was followed by a declaration u/s 6 of the Land Acquisition Act and ultimately the Land Acquisition Collector vide his award dated 25.10.1979 assessed the value of shed that was meant for keeping birds at Rs.3,90,632.98P. The trees standing in the area were evaluated at Rs. 1380.22 whereas Tubewell (Chamber of Chabacha) was assessed at the value of Rs. 1092.00. The Land Acquisition Collector also awarded Rs. 27,480/- for loss of business and Rs. 5,000/- as Transporting charges. Besides that a solatium amounting to Rs. 58965.78P was also given. In all, therefore, an amount of

Rs.4,84,550.98 was given to the claimants in R.F.A. No, 1534 of 1994 as compensation for acquisition of various items fully detailed above. Being dissatisfied, the claimants preferred an application u/s 18 of the Land Acquisition Act and sought a reference for further enhancing the compensation on various heads detailed above and the learned Additional District Judge Ludhiana vide his judgment dated 24th of March, 1984, assessed the value of super structures at Rs. 4,30,632.98P whereas loss of birds and earnings was assessed at Rs. 4,20,000/-. Rs. 5,000/- was assessed as costs of dismantling and re-installing of the machinery and transportation charges for removing the machinery. Besides all this solatium at the rate of 15% and interest at the rate of 6% per annum on the enhanced amount of compensation was allowed by the Additional District Judge. Against this judgment of the Additional District Judge, as mentioned above, whereas claimants have filed R.RA.No. 1534 of 1994 and R.F.A. No. 2020 of 1994, the State has filed R.F.A. No. 1631 of 1984.

3. In support of the appeals Mr. R.S. Bindra learned Senior Advocate appearing on behalf of the appellants contends that in the very nature of things the birds which were 35000-40000 could not be shifted from a place where they were housed i.e. place of acquisition as removing the birds would have certainly resulted in their extinction. That being the position, birds could only be sold as a meat. Therefore, the claimants suffered immense loss of business whereas the learned Additional District Judge has only assessed the loss of birds and earnings at Rs. 4,20,000/- which is wholly inadequate in the facts and circumstances of the case.

4. This Court after hearing the learned Counsel for the parties and going through the record is not at all impressed with the sole contention of the learned counsel noted above. The learned Additional District Judge decided the matter after evaluating the entire evidence on all issues and relying upon the Division Bench judgment of this Court in Smt. Savitri Devi v. State of Haryana (1984)86 P.L.R. 47, wherein criteria to assess the loss in a case like the one in hand was laid down.In Smt. Savitri Devi''s case (supra) it was held that where a poultry farm was being run on the acquired land and the compensation was to be paid, the claimant is entitled to compensation for the period which it will take to restart the poultry business and receive income from the birds and it hardly makes any difference whether claimant was able to restart business after acquiring suitable land or had closed the business for non-availability of land. The claimant in such a matter is entitled to compensation for loss of earnings equivalent to income for one year i.e. Rs. 1/- per bird per month for 12 months. While relying upon the ratio of this judgment the learning Additional District Judge suitably enhanced the compensation under the head "Loss of birds and earnings etc." to Rs. 4,20,000/-. No fault can at all be found with the findings recorded by the learned Additional District Judge either with regard to quantity of birds or in determining the compensation for loss of birds and earning. No arguments at all on other heads like costs of buildings and super structures etc. has been raised by Mr. Bindra. Therefore, there is no merit in this appeal and the same is dismissed.

5. So far as R.F.A. No. 2020 of 1984 is concerned loss of business has been assessed in the same manner as has been done in the case giving rise to R.F.A. No. 1534 of 1984 and there is no merit in this appeal as well. The appellant-claimants appeal is dismissed.

6. Mr.Masih, learned Assistant Advocate General, Punjab could not bring to the notice of this Court any material which may call for reduction of the compensation as already assessed by the trial Judge. He, however, vehemently contends that solatium worked out at the rate of 15% by the Trial Judge could not possibly be granted as Sub-section (2) of Section 23 dealing with solatium applies only to first part of Section 23(1) of the Land Acquisition Act. Sub-section (2) of Section 23 of the Land Acquisition Act reads thus:-

"In addition to the market value of the land, as above provided, the Court shall in every case award a sum of fifteen per centum on such market value, in consideration of the compulsory nature of acquisition."

It is not disputed that in so far as the present case is concerned, the acquisition and award of the Land Acquisition Collector as also the judgment of the trial Judge being of such date, amended provisions of the Land Acquisition Act do not apply. It may be mentioned here also that whereas earlier solatium admissible Under Sub-section (2) of Section 23 was 15% , it has been now enhanced to 30%.

7. The Court after considering the matter finds considerable merit in the contention raised by Mr. Masih. Sub-section (2) of Section 23 as per language employed therein appears to this Court to be applicable only to the ''market value'' of the land and the words "market value of the land" appear only in first part of Section 23 of the Land Acquisition Act. The words ''market value'' re-appear in Sub-section (2) of Section 23. In Sub-section (2) of Section 23, the solatium as it is commonly called is awardable on such market value. The word ''such'' in Sub-section (2) of Section 23 has to be given its full meaning. Solatium is available on items covered by clause firstly of Sub-section (2) of Section 23. The other clauses in sub section relate to various heads totally unconnected with the market value of the land. The view I am taking in the matter was also taken up by a single Bench of this Court in Punjab State through Land Acquisition Collector, Punjab v. Gurbachan Singh and Ors. , (1988-2)94 P.L.R. 695. While dealing with the matter Justice I.S. Tiwana, held:-

"Lastly, it is maintained by Mr. Aggarwal that the payments to be made to the claimants in terms of Sections 23(1-A) and 23(2) and 28 of the Act are to be worked out on the basis of the entire amount of compensation payable to them i.e. the market value of their acquired land and the damages assessed under clause ''thirdly'' of Section 23 of the Act. This, however, appears untenable. So far as the claims u/s 23(1-A) and Sub-section (2) of this section are concerned, the learned counsel appears to ignore the distinction between the market value as permissible under Clause (i) of Sub-section (1) and the amount of damages payable under clause thirdly of this Sub-section. The amount of damages cannot possibly be treated as part of the market value. This distinction in the two phrases has clearly been noticed by the two Division Benches in the Sate of Madras represented by Collector of Madras v. Mohammed Mustafa and State of Bihar v. Rameshwar Singh."

8. A Division Bench of the Madras High Court has also taken the same view in The State of Madras Vs. Mohamed Mustafa, . A Division Bench of Madhya Pradesh High Court in The Collector Vs. Chaturbhuj Panda and Others, has also taken the same view. A Division Bench of Patna High Court in State of Bihar Vs. Rameshwar Singh, reiterated the same view.

9. For the reasons recorded above, the State Appeal bearing R.F.A. NO. 1631 of 1984 is partly allowed. The claimants in the State Appeal i.e. respondents are not held entitled to 15% solatium. Order of the District Judge is accordingly modified. In view of the facts and circumstances of this case, there shall be no order as to costs.

