
(2010) 05 P&H CK 0186

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 553 of 1999

Gurdev Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

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

Citation : (2010) 4 RCR(Civil) 82

Hon'ble Judges : Nawab Singh, J

Judgement

Nawab Singh, J.

1 This judgment would dispose of above noted 13 appeals (RFA No. 427172, 4467, 4655, 468485, 471 of 1998, 313, 255, 553, 3706, 3707 of 1999 and 3934 of 2006) filed by the land owners impugning the judgment/Award dated August 28th, 1998 passed by the Additional District Judge/Court of Reference (for short "the Court of Reference"), Sirsa.

2 Pursuant to the notification dated November 1st, 1994 under Section 4 of the Land Acquisition Act (for short 'the Act'), 21.24 acres of land of Ellenabad town, District Sirsa was acquired for the construction of bypass from SirsaEllanabad road to HanumangarhTibbi road. The Land Acquisition Collector vide Award dated December 17th, 1996 assessed the market value of the acquired land by categorising the same into six blocks, that is, Nehri, Chahi, Barani, Gair Mumkin, Gair Mumkin Bhatha and Gair Mumkin Godam and assessed the market value at the rate of Rs. 2 lacs per acre for Nehri, Chahi, Gair Mumkin Godam and Gair Mumkin lands and Rs. 1,50,000/ per acre for Barani lands and Gair Mumkin Bhatha. Dissatisfied therewith, the land owners filed references under Section 18 of the Act and the Court of Reference determined the market value of the acquired land at the gross rate of Rs. 6,40,000/ per acre discarding the belting system adopted by the Collector. Thereafter, 40% cut was applied for development charges thereby assessing the market value at the rate of Rs. 3,84,000/ per acre.

3 The Court of Reference upheld the market value assessed by the Collector with regard to boundary wall, residential house, tubewell etc. on account of lack of evidence.

4 The Court of Reference while determining the market value of the acquired land took into consideration two saledeeds, that is, Exhibit P15 and P29.

5 Learned counsel for the land owners have assailed the finding of the Court of Reference on the grounds (i) that the Court of Reference had taken into consideration only two saledeeds Exhibit P15 and P29 to assess the market value because those were within the period of one year preceding the date of notification under Section 4 of the Act but ignored the saledeed Exhibit P14 dated November 5th, 1993 which was also within the period of one year preceding the date of notification which was patently wrong. The said sale deed should also have been taken into consideration along with the saledeeds Exhibit P15 and P29 while assessing the market value and; (ii) that 40% cut should not have been applied in this case because the land acquired was for the construction of bypass so, the question of any development on the said land does not arise. In support of the contention, reliance has been placed on C.R. Nagaraja Shetty v. Special Land Acquisition Officer 2009(4) RCR 460.

6 Firstly, the topography of the land is to be seen. A portion of the acquired land is within the Municipal Limit of Ellanabad town. It is at a distance of 11.5 killa from the abadi of Ellanabad. It is suburban land and various commercial establishments are also located near the acquired land. A Dal Plant, Paper Mill, Saw Mills and various commercial and industrial establishments are also located near the acquired land as depicted in the site plan (Exhibit P 1), spoken by Gajender Goel (PW1), Arjun Ram (PW24), Sukhwinder Singh (PW25) and Naib Singh Field Kanungo (RW1) and observed by the Court of Reference in paragraph 12 of the judgment. In view of this, the acquired land had great potential value of development for residential, commercial and industrial purposes.

7 The market value of the acquired land was assessed by the Court of Reference taking into consideration the saledeeds Exhibit P15 and P29 because those were within the period of one year preceding the date of notification and assessed the market value at the rate of Rs. 4000/ per marla, that is, Rs. 6,40,000/ per acre. The saledeed Exhibit P14 was ignored because as per the Court of Reference, it was not within the period of one year preceding the date of notification which was factually incorrect because the saledeed Exhibit P14 is dated November 5th, 1993 and the notification under Section 4 of the Act was published on November 1st, 1994. This being so, it was incumbent upon the Court of Reference to take into consideration the saledeed Exhibit P14 also.

8 After taking into consideration all the three saledeeds viz. Exhibit P14, P15 and P29, the average price of the acquired land comes to Rs. 7079/ per marla. The calculation has been made with the assistance of counsel for the land owners and the State.

9 Since the aforesaid value has been determined on the basis of the sale instances which relate to small pieces of land, therefore, some discount by way of deduction has to be made as the acquired land was a large chunk. In considered opinion of this Court, 33% cut to the aforesaid valuation would be just and appropriate in the given circumstances of the instant case. Applying the cut of 33%, the market value of the acquired land comes to Rs. 4743/ per marla, that is, Rs. 7,58,880/ per acre.

10 The next question that arises for consideration is whether 40% cut applied by the Court of Reference on account of development charges was justifiable or not ?

11 In C.R. Nagaraja Shetty's case (supra), the land was acquired for widening of the National Highway. Hon"ble High Court of Karnatka enhanced the compensation amount to Rs. 75/ per square feet but deducted Rs. 25/ per square feet for development charges. The Hon"ble Supreme Court held that since the land was acquired for widening of the National Highway, there was no question of any development on the said land and deduction of 1/3rd on account of development charges was not proper.

12 In the instant case, the land was acquired for the construction of bye pass so, in view of the aforesaid authority, question of deducting of 40% amount on account of development charges does not arise. Thus, the Court of Reference fell in error in applying the cut of 40%.

13 Learned counsel for the land owners have not challenged the finding of the Court of Reference qua the rejection of their claim for boundary, houses and tubewell etc.

14 In view of above, the market price of the acquired land is assessed at Rs. 7,58,880/ per acre. Besides this, the land owners will also be entitled to the statutory sum in accordance with Section 23(1A) of the Act and 30% more sum in consideration of the compulsory nature of the acquisition as provided under Section 23(2) of the Act. They will also be entitled to interest as provided under Section 28 of the Act. The appeals are accordingly, accepted in the manner indicated above.