(2003) 11 P&H CK 0052

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 793 of 1985 with R.F.A. No. 834 of 1985 with R.F.A. No. 835 of 1985 and R.F.A. No. 836 of 1985

Gurdev Singh (Died) through LRs. and others APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 19-11-2003

Acts Referred:

Citation : (2004) 2 LJR 334 : (2004) 2 RCR(Civil) 199

Hon'ble Judges : Satish Kumar Mittal, J

Advocate : Mr. I.S. Rangpuri, Advocate. None.Mr. D.R. Mahajan, Advocate. None., Advocates for appearing Parties

Judgement

Satish Kumar Mittal, J.

1. This judgment shall dispose of Regular First Appeal Nos. 793, 834, 835 and 836 of 1985, which are arising from the same notification and the same award.

2. Vide notification dated 30.10.1981 issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as `the Act''), State of Punjab acquired 5.15 acres of land situated in the revenue estate of village Akalgarh, Tehsil Jagraon, for a public purpose, namely, for the Defence of India.

3. The Land Acquisition Collector vide his award dated 22.7.1983 determined the market value of the acquired land at the rate of 21,000/ per acre for gair mumkin land. The claimantsland owners were also awarded solatium at the rate of 15% on the aforesaid compensation. On reference under Section 18 of the Act, the Reference Court vide its award dated 2.3.1985 fixed the market value of the acquired land at the flat rate of Rs. 44,000/ per acre. Out of the four references, in three references (R.F.A. Nos. 834, 835 and 836 of 1985), the claimantslandowners were also awarded 5% of the market value of the acquired land as damages on account of severance. Besides, the claimants landowners were also awarded solatium at the rate of 30% on the enhanced compensation and not on the compensation awarded on account of severance. The

claimantsappellants were also awarded interest only at the rate of 9% over the enhanced compensation from the date of its payment. This award is under challenge in these Regular First Appeals.

4. The learned Reference Court determined the market value of the acquired land at the rate of Rs. 44,000/ per acre on the basis of sale transaction Ex.A5 vide which the land measuring 12 marlas was sold for Rs. 5000/ on 23.9.1977 i.e. at the rate of Rs. 66666.66 per acre. This sale transaction was pertaining to the adjoining land which was touching the 9 marlas wide road. On that account, the learned Reference Court imposed 1/3rd cut on the said sale transaction and take the sale price of the same as Rs. 44444.44 per acre.

5. The learned counsel for the appellants submitted that the learned Reference Court was not justified in imposing 1/3rd cut on the aforesaid sale transaction on account that the said land was touching the 9 karams wide road. In this regard, he referred to the finding recorded by the learned Reference Court itself about the potentially of the acquired land in question. It has been held by the Reference Court that the acquired land was touching the Air Force Hospital, Halwara, Defence Cinema and was stipulated at a distance of half kilometer from the main MullanpurRaikot road. On the basis of the said finding about residential and commercial potentiality of the acquired land, the Reference Court granted the uniform rate to the acquired land instead of assessing the market value in two blocks.

6. I have heard the arguments of the learned counsel for the parties on this point. Keeping in view the facts of this case and the situation of the acquired land, I am of the opinion that the imposition of 1/3rd cut on the aforesaid sale transaction Ex.A5 was not justified and the same was on a higher side. In my view, the cut should not be more than 20% keeping in view the position of the acquired land which was touching the Air Force Hospital, Halwara, Defence Cinema and was situated at a distance of half kilometer from the main Mullanpur. Raikot road. Thus, I determine the market value of the acquired land at the rate of Rs. 53,333/.

7. Secondly, learned counsel for the appellants submitted that award of damages at the rate of 5% of the compensation of the market value of the acquired land on account of servance is on the lower side. In this regard, while referring to the Division Bench decision of this Court in State of Punjab v. Gopal Singh, 2002(1) RCR(Civil) 658, the learned counsel for the appellants submitted that the damages on the aforesaid account should be 50% of the compensation of the acquired land.

8. I do not find any force in the aforesaid contention of the learned counsel. The case relied upon by the learned counsel for the appellants is wholly distinguishable from the facts and circumstances of the instant case. It is not the case of the appellants that the remaining unacquired land of the appellants has become useless as it could not have been cultivated. Since the remaining

unacquired land of the appellants could be properly cultivated, I do not find any justification for grant of damages more than 5% to the appellants, which has already been granted to them.

9. In R.F.A. No. 793 of 1985, in which no compensation was granted on account of severance, learned counsel for the appellant submitted that the appellant should have been granted compensation on this account also. In this case, the learned Reference Court declined the compensation on this account while observing as under :

"14. Regarding the compensation of severance of land holdings it transpires that even Om Parkash (RW1) admitted that due to the acquisition of the land measuring 10 kanal 13 marlas of Gurdev Singh, out of land measuring 25 kanal 13 marlas, the remaining of land measuring 14 kanals 18 marlas has no access through any regular passage. However, he further stated that the remaining area of land of Gurdev Singh has also been acquired. During the course of arguments, notification dated 11.10.82 of the State Govt. was filed showing the acquisition of the remaining area of land of Gurdev Singh petitioner. To similar effect is the notification dated 10th January, 1983, under Section 6 of the Land Acquisition Act. So at the most it can be said that due to acquisition of the present land remaining land of the petitioner measuring 14 kanals 18 marlas remained devoid of any passage till 11.8.1982, when the remaining land was also acquired for the said purposes. But as is apparent from the certified copy Ex.R.6 of Khasra Girdawari, Gurdev Singh petitioner has been cultivating this land and has sown paddy crop. Under these circumstances he having not suffered any loss till the remaining land was acquired he is not entitled to any compensation on this score."

10. I do not find any reason to form a different opinion.

11. The learned counsel for the appellants further submitted that in the instant case the Land Acquisition Collector made the award on 22.7.1983, therefore, the appellant were entitled to 30% solatium on the whole amount of compensation including the compensation awarded on account of severance. They were also entitled for 12% additional amount under Section 23(1A) of the Act as well as the interest at the rate of 9% for the first year and 15% for the subsequent years from the date of dispossession till the date of payment.

12. I find force in the aforesaid contention of the learned counsel for the appellants and find that the appellants are entitled to the aforesaid statutory benefits.

13. In view of the aforesaid, these appeals are allowed. The market value of the acquired land is determined at the rate of Rs. 53,333/ per acre. The appellants shall also be entitled to 30% solatium under Section 23(2) of the Act, 12% per annum additional amount on the enhanced market value of the acquired land under Section 23(1A) of the Act for the period commencing on and from the date of the publication of the notification under Section 4 of the Act to the date of the

award of the Collector or the date of taking possession of the land, whichever is earlier; and interest at the rate of 9% for one year and 15% for subsequent years till its payment under Section 28 of the Act.

Appeals allowed.

