

(2003) 10 P&H CK 0135

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 1522 of 1985

Gurmukh Singh and others

APPELLANT

Vs

State of Punjab and another

RESPONDENT

Date of Decision : 07-10-2003

Acts Referred:

Citation : (2004) 1 RCR(Civil) 378

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

Advocate : Shri Kapil Aggarwal, Advocate. Shri Sidharath Sarup, AAG, Haryana.,
Advocates for appearing Parties

Judgement

M.M. Kumar, J.—This appeal filed under Section 54 of the Land Acquisition Act, 1894, (for brevity 'the Act') challenges order dated 6.6.1985 passed by the Addl. District Judge, Kurukshetra. The Addl. District Judge has enhanced the compensation of the land of the claimantappellants while deciding their application received by reference under S. 18 of the Act from the Collector Land Acquisition. The Collector had awarded compensation for the acquired land @ Rs. 25,000/ per acre and solatium @ 15 percent. However, the Collector did not allow any interest as the land in dispute was lying vacant and possession was sought to be taken after the award.

2. Brief facts of the case necessary for the disposal of the instant appeal are that in order to establish Sub Divisional Complex respondent State issued notification under Section 4 of the Act on 5.12.1980 for acquiring land measuring 1 kanal 10 marlas situated in village Salimpur, Tehsil Guhla, District Kurukshetra. The nature of the whole land described in the revenue record was Nehri and the Collector vide his award dated 21.4.1982 awarded compensation @ Rs. 25,000/ per acre with solatium @ 15 percent. However, no interest was awarded because the land was lying vacant and possession of the land was sought to be taken after the award. The claimantappellants sought a reference under Section 18 of the Act claiming that market value of the land was not less than Rs. 1,50,000/ per acre on the date of issuance of notification under Section 4 of the Act. It was claimed

that the land was situated on Guhla Cheeka road and that there were public buildings near this land. The land had the potentials for being used for commercial purposes.

3. The Id. Addl. District Judge allowed opportunity to the parties to adduce evidence. Claimantappellants placed on record of Ex.P.1 which is sale deed in respect of the acquired land showing that the land was purchased by the claimantappellants about 7 months before the issuance of notification under Section 4 of the Act. The sale deed is dated 25.5.1980 and the notification was issued on 5.12.1980. According to the statement made by the claimant appellant Raghunath Rai, the land was purchased by the claimantappellants from one Som Nath for Rs. 30,000/. A sum of Rs. 26,200/ was paid as earnest money on 4.2.1980 and the remaining amount of Rs. 3,800/ was paid in the presence of the SubRegister. The witness further produced another sale deed Ex.P.2 showing the sale of 5 marlas of land for Rs. 12,000/ on 22.12.1983. Explaining the reasons for purchasing the land, the claimantappellant Raghunath Rai further stated that he wished to construct a residential and commercial premises on the acquired land since it has commercial/residential potentiality. It was claimed that construction of Sub Divisional Complex itself shows that the land has commercial/residential potential. He admitted that he has been working as a Stampvendor but denied the suggestion that sale deed Ex.P.1 was fictitious in order to scare away the preemptor or to obtain excessive compensation because the claimantappellants had come to know about the acquisition. RespondentState placed reliance upon the following sale transactions which are Exs. R.1 to R.5

Ex. No.

Mutation No.

Date of Sale

Area sold

Sale consideration

Approximate price per acre

R1

317

20.12.81

12K 1 M

15,000/

10,000/

R2

723

17.3.81

4 K 1 M

20,000/

39,500/

R3

757

4.11.75

0 K 5 M

700/

22,400/

R4

766

1.3.83

1 K 19M

3000/

12,300/

R5

791

6.5.75

7 K 17M

20,000/

20,400/

4. Ld. Addl. District Judge discarded the sale transaction Ex.P.2 for the reasons that it relates to the postnotification period. The sale deed is dated 22.12.1983 whereas the notification under Section 4 of the Act was issued on 5.12.1980. The other sale deed dated 27.5.1980 Ex.P.1 has been discarded on the ground that it was not genuine and in all probabilities exorbitant sale consideration was mentioned in the sale deed either with the oblique motive of scaring away the prospective preemptors or the claimants appellants might have come to know that the land was likely to be acquired for the construction of Sub Divisional Complex. Support was also sought from the fact that Raghunath Rai was himself a petitionwriter and might have got recorded a fictitious/exaggerated sale consideration. However, Id. Addl. District Judge placed heavy reliance on sale

transaction Ex.R.2 dated 17.3.1981 being more close to the date of notification under Section 4 of the Act and discarded other sale transactions. The operative part of the order reads as under :

"The Land Acquisition Collector had himself awarded compensation for the acquired land at the rate of Rs. 25,000/ per acre. In these circumstance the transactions furnished by documents Ex.R.1 and R.4 cannot be made the basis for working out the market value of the acquired land as according to these transactions the value of the land comes to Rs. 10,000/ and Rs. 12,300/ per acre respectively. The transactions furnished by the documents Ex.R.3 and R.5 relate to the years 1975. i.e. about five years prior to the present acquisition and thus these documents can also not be made the basis for working out the market value of the acquired land. The transaction Ex.R.2 relates to 17.3.1981 and as per this transaction 4 kanals 1 marla of land was sold for Rs. 20,000/. The average price according to this transaction comes to Rs. 39,500/ per acre. The land covered by this transaction is comprised in killa Rs. 25/8. This land abuts the Guhla Cheeka road like the acquired land as will be apparent from the copy of the Aks Shajra Ex.R.7. This transaction thus can be made the basis for working out the market value of the acquired land. Relying upon this transaction I hold that the market value of the acquired land was Rs. 39,500/ per acre on 5.12.1980. Issue No. 1 is decided accordingly."

5. After assessing the market value of the land, the Id. Addl. District Judge proceeded to grant statutory benefits alongwith interest etc. and observed as under :

"In view of the discussion foregoing the petitioners are awarded compensation for the acquired land at the rate of Rs. 39,500/ per acre. They are also awarded solatium at the rate of 30%. They are also awarded interest at the rate of 12% per annum from 5.12.1980 to 21.4.1982. They shall also be entitled to get interest on the enhanced amount of compensation at the rate of 9% per annum for a period of one year from the date of dispossession and at the rate of 15% of per annum after the expiry of the above mentioned period of one year till the enhanced amount of compensation is paid in Court. The petitioners are also awarded the costs of this petition. Counsel fee is assessed at Rs. 300/. Memo of costs be prepared and the records be consigned."

6. Shri Kapil Aggarwal, learned counsel for the claimantappellant has argued that the Id. Addl. District Judge has discarded the sale transaction Ex.P.1 dated 27.5.1980 on the basis of conjecture and no evidence has been adduced to show that claimantappellants have exaggerated the sale consideration in anticipation of acquisition of land. The mere fact that the claimantappellant is a deed writer is no ground to discard the sale transactions which reflects the highest value and proximity in time to the notification under Section 4 of the Act. The Id. counsel has further submitted that there is no evidence showing any preemptor to record a finding that inflated price has been quoted in the sale deed Ex.P.1 in order to scare away the preemptors. Condemning the reliance on sale transaction Ex.R.2

the Id. counsel has pointed out that the same is post notification sale transaction and would not furnish any basis for determining market value of the land.

7. Learned State counsel has argued that there is wide difference between the sale transaction Ex.P.1 which is in respect of the acquired land and the sale transaction Ex.R.2. The market value of the land according to Ex.R.2 dated 17.2.1981 comes to Rs. 39,500/ per acre whereas according to Ex.P.1 which is dated 27.5.1980 it comes to Rs. 1,50,000/ which is almost four times than the price shown in Ex.P.2. However, he has fairly conceded that there is no positive evidence with regard to exaggerating of the value of the land in order to scare away the preemptors or on account of the fact that claimant appellants had come to know about the acquisition. He maintained that one of the claimants Raghu Nath Rai who has appeared as PW 1 is a deed writer and before the issuance of notification under Section 4 of the Act there is always a survey undertaken which results in leakage of information to the land owners that the land is likely to be acquired. Therefore, no reliance could be placed on Ex.P.1.

8. After hearing the learned counsel for the parties and perusing the record, I am of the considered view that this appeal deserves to be allowed. The sale transaction Ex.P.1 is admissible in evidence under Section 11 of the Indian Evidence Act, 1872. It is well settled that sale instances in respect of the land acquired, which have proximity to the land and time of acquisition is a better guide to the market value of the land as compared to the sale deeds of other similar land because the sale deed of different land cannot ever be the same. The element of dissimilarity completely comes to an end if the sale instance is in respect of the same land. For this proposition reliance can be placed on the judgment of the Supreme Court in the case of Bangaru Narasingha Rao Naidu v. Revenue Divisional Officer, (1980) 1 SCC 575.

9. It is equally well settled that the market value of the land would mean the price that a willing purchaser would pay to willing seller for the land having due regard to its existing condition with all its existing advantages and its potential possibilities excluding any advantage due to the carrying out of the scheme for which the property is compulsorily acquired. It is also true that there is element of guess work inherent in most cases involving determination of the market value of the acquired land. But this in the very nature of things cannot be helped as has been laid down by the Supreme Court in Prithvi Raj Taneja v. State of M.P., (1977) 1 SCC 685.

10. In Chimanlal Hargovinddas v. Special Land Acquisition Officer, 1988(2) RRR 136 (SC) : (1988) 3 SCC 751 detailed list of 17 principles have been given by the Supreme Court for the purposes of determining the market value of land for compensation. Principle Nos. 5 to 10 and 14 would be relevant for the decision of the present appeal and the same reads as under :

"5. The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under S. 4 of the Land Acquisition

Act (dates of notifications under Ss. 6 and 9 are irrelevant).

6. The determination has to be made standing on the date line of valuation (date of publication of notification under S. 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

7. In doing so by the instances method, the court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

8. Only genuine instances have to be taken into account. (sometimes instances are rigged up in anticipation of acquisition of land.)

9. Even post notification instances can be taken into account (1) if they are very proximate (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

10. The most comparable instances out of the genuine instances have to be identified on the following considerations :

i) proximity from time angle.

ii) proximity from situation angle.

14. The exercise indicated in Cls. (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. Some such illustrative (not exhaustive) factors are :

Plus factors.

1. Smallness of size.

2. Proximity to a road.

3. Frontage on a road

4. nearness to developed area

5. regular shape

6. level visavis land under acquisition.

7. Special value for an owner of an adjoining property to whom it may have some very special advantage.

Minus factors.

1. largeness of area

2. situation in the interior at a distance from the road

3. narrow strip of land with very small frontage compared to depth
4. lower level requiring the depressed portion to be filled up
5. remoteness from developed locality.
6. some special disadvantageous factor which would deter a purchaser."

11. It would also be pertinent to make a reference to the observations of the Supreme Court in *M/s Printer House Private Ltd. v. Saiyadan*, AIR 1994 SC 1160 wherein it has been held that when there are several comparable sales pertaining to different lands, the Courts must choose that sale relating to the land which closely or nearly compares with the parcel of acquired land for which the market value is to be determined and to take the price of land of such sale as the basis of determining the market value. The observations of their Lordships in para 17 are as under :

"If the sale is found to be a genuine one or the award is an accepted one, and the sale or award pertains to land which was sold or acquired at about the time of publication of preliminary notification under the Act in respect of the acquired land, the market value of which has to be determined, the Court has to mark the location and the features (advantages and disadvantages) of the land covered by the sale or the award. This process involves the marking by Court of the size, shape, tenure, potentiality etc. of the land. Keeping in view the various factors marked or noticed respecting the land covered by the sale or award, as the case may be, presence or absence of such factors, degree of presence or degree of absence of such factors in the acquired land the market value of which has to be determined, should be seen. When so seen, if it is found that the land covered by the sale or award, as the case may be, is almost identical with the acquired land under consideration, the land under the sale or the market value determined for the land in the award could be taken by the Court as the 'price basis' for determining the market value of the acquired land under consideration. If there are more comparable sales or awards of the same type, no difficulty arises since the price basis to be got from them would be common. But, difficulty arises when the comparable sales or awards are not of the same kind and when each of them furnish a different price basis. This difficulty cannot be overcome by averaging the prices fetched by all the comparable sales or awards for getting the price basis on which the market value of the acquired land could be determined. It is so, for the obvious reason that such price basis may very largely depend even on comparable sales or awards. Moreover, price basis got by averaging comparable sales or awards which are not of the same kind, cannot be a correct reflection of the price which the willing seller would have got from the willing buyer, if the acquired land had been sold in the market..... Therefore, when there are several comparable sales or awards pertaining to different lands, what is required of the Court is to choose that sale or award relating to a land which closely or nearly compares with the plot of land the market value of which it has to determine, and to take the price of land of such

sale or award as the basis for determining the market value of the land under consideration."

12. When the principles laid down in the aforementioned judgments of the Supreme Court are applied to the facts of the instant case, it is evident that sale instance Ex.P.1 would be the most relevant sale transaction for the purposes of determining the market value of the land because it pertains to the same land which is under acquisition and the sale deed is dated 27.5.1980 whereas the acquisition is made on 5.12.1980. The sale instance Ex.R.2 is dated 17.2.1981 which is almost two months later would also be relevant because it contains inherent guiding factors which would show that falling value of acquired land. The sale instance Ex.P.1 indicates that the rate of land immediately before acquisition was Rs. 1,60,000/ per acre whereas the sale instances Ex.R.2 shows that market value of the land is Rs. 39,500/ per acre even after acquisition. It is thus evident that even after acquisition the land adjacent to the acquired land was fetching price much less than the price fetched by the acquired land as proved by Ex.R.2. There is no evidence, however, to show that claimantappellants have quoted exaggerated price with the object of avoiding the claims of preemptors nor there is any evidence produced by the respondent State to show that any survey before acquiring the land was conducted which might have leaked to the claimantappellants and therefore, the excessive price have been quoted in the sale deed. The sale instance Ex.R.2 is in respect of the land abutting the acquired land and is a post acquisition sale transaction. There is huge difference between the two sale instances. If the potential of the land acquired is such as projected by the claimantappellants then the price would have gone up rather than showing the reducing trend. In these facts and circumstances it would be fair to assess the market value of the land acquired on the basis of sale deed Ex.P.1 as it is in respect of the same land. Therefore, the claimantappellants shall be entitled to assessment of their land at that rate and by imposing onethird cut on account of the fact that there is wide difference between Ex.P.1 and Ex.P.2. The market value of the land thus assessed would be Rs. 1,05,000/ per acre. Accordingly the appeal is partially allowed and the State shall assess the compensation by keeping in view the market value at the above rate. The claimantappellants shall also be entitled to solatium @ 30 percent on the enhanced amount. They are also awarded interest @ 12 percent p.a. from 5.12.1980 to 21.4.1982. They shall also be entitled to get interest on the enhanced amount of compensation @ 9 percent p.a. for the period of one year from the date of dispossession and @ 15 percent p.a. after the expiry of one year till the enhanced compensation is paid in the Court. In view of the peculiar facts there would be no order as to costs.