
(2004) 12 P&H CK 0051

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 298 of 1989

Hans Raj Setia (Died) through LRs. and Others

APPELLANT

Vs

Land Acquisition Collector and Another

RESPONDENT

Date of Decision : 14-12-2004

Acts Referred:

Land Acquisition (Amendment) Act, 1984 — Section 4, 6
Land Acquisition Act, 1894 — Section 18, 54

Citation : (2005) 140 PLR 142 : (2005) 2 RCR(Civil) 55

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : K.S. Malka, for the Appellant; G.S. Cheema, D.A.G., for the Respondent

Judgement

G.S. Singhvi, J.—This is an appeal by the claimants u/s 54 of the Land Acquisition Act, 1894 (for short, "the Act") for enhancement of the compensation awarded by Additional District Judge, Ferozepur and for grant of the benefits of the amendments made in the Act by the Land Acquisition (Amendment) Act, 1984.

2. The Government of Punjab, vide notification dated 15.3.1982 issued under Sections 4 and 6 of the Act, acquired 7.46 acres of land situated in village Suppanwali, Tehsil Abohar, District Ferozepur for a public purpose, namely, for construction of Daulatpur Minor. This included 15 Kanals 2 Marlas of land belonging to the appellants which formed part of Khasra No. 63/26/1 on which they had planted kinoo/malta orchard. The possession of the land had been taken by the concerned authorities in October, 1977 i.e. almost five and half years before issuance of acquisition notification. By an award dated 7.11.1985, Land Acquisition Collector, Drainage Circle, Patiala determined the market value of the land at the following rates:-

Nehri - Rs. 4,600/- per acre, Gair-mumkin - Rs. 2,000/- per acre. 3. Feeling dissatisfied with the award of the Land Acquisition Collector, the appellants filed an

application u/s 18 of the Act for award of compensation at the rate not less than Rs. 60,000/- per acre. They demanded compensation for the standing crops and fruit trees. They also claimed compensation of Rs. 20,000/- due to severance and Rs. 10,000/- as damages for diminution of the profits of the land acquired between the time of publication of notifications under Sections 4 and 6 of the Act. The respondents contested the application filed by the appellants and averred that the market value fixed by the Land Acquisition Collector was just and fair.

4. On the pleadings of the parties, the Additional District Judge framed the following issues:-

(1) What is the market value of the land acquired? OPA

(2) To what amount the applicant is entitled as compensation? OPA

(3) Relief.

5. In support of their claim, one of the appellants, namely, Hans Raj, appeared as AW1 and examined Shri Sant Ram, Inspector (Horticulture) as AW2. They also tendered in evidence copy of jamabandi for the year 1973-74 (Exhibit A1), copies of khasra gir-dawaris from 1974 to 1979 (Exhibit A2), 1979 to 1984 (Exhibit A3) and 1984 to 1987 (Exhibit A4) and copies of sale deeds Exhibits A5 to A8. The respondents examined Patwari Ram Partap as RW1 and Patwari Banarsi Das as RW2.

6. After considering the evidence produced by the parties, the learned Additional District Judge assessed the market value of the land of the appellants at the rate of Rs. 60,000/- per acre. He also held that the claimants shall be entitled to solatium at the rate of Rs. 30% and interest at the rate of Rs. 15% from the date of possession i.e. July 1977. Paragraphs 8 and 9 of award dated 31.10.1988 passed by the learned Additional District Judge, which contain discussion on issue Nos. 1 and 2, read as under:-

"8. The land has been acquired out of number 68/26/1 and from the jamabandi for the year 1974-75, apparently there is a garden in 68/26/1 in the area of 200 kanals. Khasra girdawari Ex.A2 for the year 1974-79 also shows garden/bagh in the above said land. The possession of the land has been taken in 1977 and the remaining khasra girdawaries Ex.A3 and A4 are irrelevant except for the fact that in the remaining area of 68/26/1 there is still a garden. So, it stands proved that there was orchard of kinoo in the land acquired when its possession was taken. The possession has been taken in 1977 and the notification for the acquisition under Sections 4 and 6 has been gazetted in 1982 only after lapse of five years and the land was required for urgent work and as such by the time the notification for acquisition has taken place. The quality of land has already changed, the respondents have not placed on the record any document or any note of the concerned officer who took the possession that there was no orchard in the acquired land. Once it is held that there was orchard in the land, then

value for the orchard is to be assessed and not of the vacant or agricultural land. As such, sale deeds from Ex.A5 to A8 and Ex.R2 and R3 are irrelevant for the consideration of the award.

9. The learned counsel for the petitioners has relied upon 1983 P.L.J. page 290 *Ranjit Singh v. Union Territory of Chandigarh*, wherein the concept of market value was discussed in detail and there was also table at page 298 for the year 1966 where the income from Malta aged about 5 years was assessed as Rs. 25/- and the fruit life for 30 years. The learned counsel has argued that no sale of any orchard has taken place in the area. As such, the value should be assessed from the yearly income of the orchard. He has stated that claimants claim income from the orchard as Rs. 10,000/-per acre and there were 400 trees in the orchard, but it is a matter of common knowledge that about 100 kinoo and Malta trees can be planted in one acre. So, there could be only about 200 trees in 15 kanals 7 marlas. Income has been assessed as Rs. 25/- in the year 1966 and what should be the income of 1977. In ten years, it must have been almost double and so kinoo tree is assessed at Rs. 50/- per acre. Now there are atleast 100 trees in an acre. So, the income in 1977 from orchard of one acre of kinoo income to Rs. 5,000/-. But no sale of the orchard has been brought on the record. Generally the orchard are not sold. So, the value of orchard and the land underneath is to be assessed from its annual income, multiplied by way of suitable multiplier, the question arises what should be the multiplier. Learned counsel for the parties have not been able to assist the court by any authenticated pronouncement of any judgment on this point, so, the multiplier of 12 will be justified and the compensation for orchard and the land underneath is assessed @ Rs. 60,000/- per acre. As such, issues No. 1 and 2 are decided accordingly." (Underlining is mine)

7. Shri K.S. Malka, learned counsel for the appellants made three-fold arguments. He firstly argued that the finding recorded by the learned Additional District Judge about the number of kinoo trees planted on the acquired land is perverse, in-as-much as, he not only ignored the uncontroverted statement made by Hans Raj-AW1 that 400 kinoo trees were standing on the acquired land, but also assumed that only 100 kinoo trees can be planted on one acre land. Learned counsel submitted that in the absence of any contrary evidence, the learned Additional District Judge should have accepted the statement of AW 1- Hans Raj that 400 kinoo trees were standing on the acquired land at the time of acquisition. Shri Malka then argued that the income of Rs. 50/- per plant fixed by the learned Additional District Judge is on extremely lower side and the appellants are entitled to a higher compensation keeping in view the rising trend of prices evinced by the price index determined by the government. Learned counsel also assailed the application of multiplier of 12 only and argued that the learned Additional District Judge gravely erred in not applying the multiplier of "20" as was accepted by the Supreme Court in *The State of Madras Vs. Rev. Brother Joseph*, and *State of West Bengal Vs. Shyamapada and Others*, . The third argument of the learned counsel is that the learned Additional District

Judge erred in not granting the benefit of amendments made in the Act vide Land Acquisition (Amendment) Act, 1984.

8. Shri G.S. Cheema, learned Senior Deputy Advocate General, Haryana supported the award of the learned Additional District Judge and argued that the appellants are not entitled to further enhancement. He submitted that the bald statement made by AW1-Hans Raj regarding the number of trees planted on the acquired land was not supported by any documentary evidence and, therefore, the learned Additional District Judge did not commit any error by granting compensation on the premise that only 100 kinoo/malta trees can be planted on one acre land. Shri Cheema further argued that the appellants did not produce any tangible evidence to prove the life of the trees and as such, the multiplier of "20" cannot be applied for grant of enhanced compensation.

9. I have thoughtfully considered the respective arguments. It is true that in his statement, Hans Raj-AWI had claimed that 400 trees were standing on the acquired land and no evidence to the contrary was produced by the respondents, but in my view, the learned Additional District Judge did not commit any illegality by not relying on the bald statement made by AWI-Hans Raj about the number of trees because he did not produce any documentary or other corroborative evidence to substantiate this assertion and in the cross-examination, he had candidly admitted that he did not have any evidence of the expenses incurred on the maintenance of the garden and there was no record regarding the sale of kinoos. The learned Additional District Judge imported his knowledge about the number of kinoo and malta trees which can be planted on one acre and proceeded to hold that about 200 trees must have been planted on the acquired land measuring 15 kanals 2 marlas. The course adopted by the learned Additional District Judge for determining the number of trees planted on the acquired land cannot be faulted because the appellants did not produce any tangible evidence to show that 400 trees had, in fact, been planted on the acquired land and the same were in existence at the time of taking possession.

10. I am also not inclined to accept the argument of the learned counsel for the appellants that the assessment of income per tree per annum i.e. Rs. 50/- made by the learned Additional District Judge is on the lower side. Admittedly, the income assessed in the year 1966 was Rs. 25/- per tree. Therefore, as in the year 1977, it could reasonably be taken to have doubled. On their part, the appellants did not produce any evidence about the income derived from the orchard. Rather, AW-1-Hans Raj admitted that he does not have any record relating to sale of kinoos. Therefore, the learned Additional District Judge did not commit any error by assessing the income of the trees at the rate of Rs. 50/- per tree per annum.

11. However, I find merit in the argument of the learned counsel for the appellants that the learned Additional District Judge erred in applying the multiplier of "12". In *Ranjit Singh v. The Union Territory of Chandigarh* 1983 P.L.J. 290, a Division Bench of this Court adopted the table given in the

publication titled "Basic Principles and Methods of Evaluation of Fruit Trees" published by S. Harbans Singh, formerly Director of Horticulture, Himachal Pradesh and who, was then holding the post of Chief Agriculture Expert and Agricultural Production Commissioner in the Ministry of Agriculture, Government of India, wherein fruit-bearing life of malta tree was shown as 25 years and yearly income of class-I tree as Rs. 60/-. The Division Bench also laid down the following proposition which has bearing on the assessment of the market value of fruit-bearing trees:-

"While evaluating the fruit trees, the price or the cost of land underneath has to be taken into consideration. This is obviously for the reason that the price of the land underneath an orchard or plantation of trees is bound to vary from place to place on account of various factors, including the location of the land. It is, therefore, not true that while working out the market value of the orchard or grove land either the price of the land as such (without the fruit trees) and timber value of the trees has to be taken into account or the same has to be determined on the basis of the formula known as "Capitalisation". Further, value of fuel or timber is only one of the consideration in determining the market value of the orchard or fruit bearing trees."

12. In *Sukhdev Singh v. State of Punjab* 1991 R R R 2, a learned Single Judge of this Court held that for working out the market value of Eucalyptus trees, the yield of three crops by each tree has to be kept in view.

13. In *State of Madras v. Rev. Brother Joseph* (supra), the Supreme Court approved the award passed by the Land Acquisition Collector and the judgment of the High Court and held that where the fruit-bearing trees are likely to yield for more than 20 years, the capitalisation of the next income at 20 years purchase is not improper.

14. In *State of West Bengal v. Shyamapada* (supra), their Lordships of the Supreme Court approved the judgment of the Calcutta High Court which had enhanced the compensation payable to the land-owners in respect of the crops at 20 times of the annul income and held as under:-

"that it was wholly unjustifiable for the Land Acquisition Officer and the District Judge to grant compensation to the land owners only for the crop standing on the land, since after one crop was taken for 7 to 10 years another crop could be raised after an interval of one to two years. As sale deeds regarding sales of land on which sabai grass was grown were not available, the compensation to be awarded to the land owners should be at 20 times the annual income from the land."

15. By applying the ratio of the above noted-judgments to the facts of this case and keeping in view the table published in the work done by S. Harbans Singh, which, as mentioned above, was accepted by the Division Bench in *Ranjit Singh's* case (supra), I hold that the appellants are entitled to compensation by applying the multiplier of 20 and to that extent, the award of the learned

Additional District Judge is liable to be modified.

16. In the result, the appeal is partly allowed. The impugned award is modified by directing the respondents to pay compensation to the appellants at the rate of Rs. 1,00,000/- per acre by adopting the following formula:-

Number of trees Average annual income per acre Multiplier 100 (Hundred Rs. 50/- (Rs. Fifty) per acre 20 (Twenty) per acre) per annum 17. The appellants shall also be entitled to the Acquisition (Amendment) Act, 1984 because the award was made by the Land Acquisition Collector after the cut off date i.e. 30.4.1982 specified in the Amending Act. The respondents are directed to pay the additional compensation to the appellants within a period of three months from the date of receipt/submission of copy of this judgment.