

(2014) 11 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No. 429 of 2004

Hari Chand

APPELLANT

Vs

Land Acquisition Collector

RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4

Citation : (2014) 11 SHI CK 0011

Hon'ble Judges : Sureshwar Thakur, J

Bench : Single Bench

Advocate : Suneet Goel, Advocate for the Appellant; R.S. Thakur, Addl. A.G. and Tarun Pathak, Deputy Advocate General, Advocate for the Respondent

Judgement

Sureshwar Thakur, J.—The lands of the appellants/claimants were brought under acquisition vide notification issued under Section 4 of the Act published on 9.6.98. The Land Acquisition Officer, HPPWD, Harmpur vide award No. 60 dated 12.12.2000 ordered the payment of total compensation of Rs. 68,982/- to the claimants/appellants.

2. The claimants/appellants, who were not satisfied with the award of the Land Acquisition Collector, filed Land Reference Petition before the learned District Judge, Hamirpur, under Section 18 of the Land Acquisition Act. The learned District Judge when seized of the reference petition dismissed the reference petition preferred by the appellants/claimants and held that proper compensation as per market price stood assessed by the Collector and the petitioners/appellants are not entitled for enhanced compensation.

3. The claimants/appellants are aggrieved by the dismissal of their reference petition by the learned District Judge, hence, have preferred the instant appeal before this Court.

4. The learned counsel appearing for the appellants is aggrieved by the learned District Judge in his impugned award having not reckoned and taken into

consideration the sale transaction comprised in Ex.PA whereby land measuring one marla was sold for a sale consideration of Rs. 50,000/-. The learned counsel appearing for the appellants vehemently canvassed before this Court that in the face of the aforesaid exhibit pronouncing upon the factum of a bonafide sale transactions having been entered into inter se a willing buyer and a willing seller, besides when evidence exists on record manifesting the fact of the lands comprised in the sale deed aforesaid being located in close proximity to the land subjected to acquisition, the sale consideration as explicitly pronounced therein constituted a valid parameter to on its strength goad the learned District Judge to compute/reckon the market value of the land subjected to acquisition. He further contends that the reason as advanced by the learned District Judge in overlooking and benumbing the probative worth of the exhibit aforesaid, inasmuch, as its comprising a sale exemplar of a sale transaction of a small tract of land, whereas the land subjected to acquisition was of a large expanse, hence, the sale instance pertaining to a small tract of land being un-reckonable for on its strength assessing and reckoning the market value of the land subjected to acquisition, is too tenuous a reason and falters in the face of a pronouncement rendered in A. Natesam Pillai Vs. Spl. Tahsildar, Land Acquisition, Tiruchy, wherein in paragraph No. 18, which is extracted hereinafter, the Hon'ble Apex Court has held that a sale transaction of small tracts of land can be a valuable guide or of immense assistance to, on its strength assessing compensation for large expanses of land.

"18. the small area of land measuring 1710 sq. ft. was sold for Rs. 20,000/- as per Ext. A-3 dated 15.7.1992 which works out to a value of Rs. 11 per square foot. A comparison of the two plots, namely, land in Ext. A-3 and the acquired land shows that they are not identical. While the land in Ext.A-3 may not be an excellent guide it is still a better guide than any other document exhibited on record. The same could be used as a relevant yard stick to assess the just and reasonable compensation in the present case."

He also relied upon a judgment of the Hon'ble Apex Court reported in Haridwar Development Authority Vs. Raghubir Singh, , the relevant paragraphs No. 9 & 10 are extracted hereinafter, which emphatically communicate the view that the sale instances of small tracts of land constitute evidence of probative worth, on strength whereto compensation can be determined for large tracts of land. However, while computing or assessing compensation for large expanses of land on the strength of sale consideration contracted for small tracts of land, deductions upto the permissible per centum are to be made. Relevant paragraphs No. 9 and 10 read as under:-

"9. The Collector has referred to several sale transactions but relied upon only one document, that is, sale deed dated 19.12.1990 relating to an extent of 11,550 sq. ft. of land sold for Rs. 4,04,250, which works out to a price of Rs. 35 per square foot. The Collector deducted 25% from the said price, as the relied upon sale transaction related to a small extent of 11,550 sq. ft. and the acquired

area was a larger extent of 8,45,174 sq. ft. By making such deduction, he arrived at the rate as Rs. 26.25 per square foot. The Reference Court and the High Court have also adopted the said sale transaction and valuation.

10. The claimants do not dispute the appropriateness of the said sale transaction taken as the basis for determination of compensation. Their grievance is that no deduction or cut should have been effected in the price disclosed by the sale deed for arriving at the market value in view of the following factors:-

(i) that the acquired lands were near to the main bypass and had road access on two sides;

(ii) that many residential houses had already come up in the surrounding areas, and the entire area was already fast developing; and

(iii) that the acquired land had the potential to be used as an urban residential area.

When the value of a large extent of agricultural land has to be determined with reference to the price fetched by sale of a small residential plot, it is with reference to the price fetched by sale of a small residential plot, it is necessary to make an appropriate deduction towards the development cost, to arrive at the value of the large tract of land. The deduction towards development cost may vary from 20% to 75% depending upon various factors {see Lal Chand Vs. Union of India (UOI) and Another, }. Even if the acquired lands have situational advantages, the minimum deduction from the market value of a small residential plot, to arrive at the market value of a larger agricultural land, in the usual course, will be in the range of 20% to 25 %. In this case, the Collector has himself adopted a 25% deduction which has been affirmed by the Reference Court and the High Court. We therefore do not propose to alter it."

(pp.584-585)

On the strength of the aforesaid pronouncement of the Hon'ble Apex Court, the learned counsel for the appellants urges that the sale instance comprised in Ex.PA constituted a valuable guide for the learned District Judge, as also, it constituted an admissible and relevant parameter while it enjoying probative vigour, for facilitating on its strength an assessment of compensation qua the land subjected to acquisition. His having omitted to rely upon it, as such, has been contended to have committed a legal misdemeanor.

5. The contentions aforesaid advanced by the learned counsel appearing for the appellants in dispelling the purported tenuous reason afforded by the learned District Judge for overwhelming the effect of Ex.PA are extremely shaky and are, for the reasons hereinafter, construed to be not having either sinew or strength. The reasons for so concluding is that in both the judgments relied upon by the counsel for the appellants the lands as subjected to acquisition were for the construction of colonies for housing people. Obviously, the authority/entity for whom the lands were acquired, had an inherent profiteering motive, inasmuch as

the entity would after developing the lands acquired proceed to sell them at a profit to the public, therefore, the loss, if any, as it may be beset with in paying a hefty amount of compensation to the land owners would hence be off set by its selling lands on a phenomenal or escalated price to the public. Consequently, when the objective of acquisition in the cases relied upon by the learned counsel for the appellants was commercial, as a corollary, then the lands of the land owners as subjected to acquisition in the cases aforesaid perceivably commanded an inherent immense escalated potentiality which escalated potentiality as compatibly pronounced in the sale considerations qua small tracts of land, was construed to be a vindicable, tenable as well as a reckonable parameter for determining the market value of large tracts of lands as were subjected to acquisition. However, while determining compensation payable for large expanses of lands, on the strength of sale considerations of small tracts of land, deductions towards developmental costs were ordained to be made. However, in the instant case the marked distinction is that lands of the landowners were subjected to acquisition for a public purpose by a welfare estate, inasmuch as, the lands of the landowners have been acquired for the purpose of construction of a public road. The respondent-State subjected to acquisition the lands of the landowners for construction of a public road as a measure of providing public amenity to the public. Obviously, the respondent/State given the salutary purpose of the acquisition of the lands of the landowners has no inherent profiteering motive in subjecting the lands of the land owners to acquisition nor it would rear any commercial advantage from the acquisition of land of the landowners/appellants. As a corollary, encumbering it with the financial liability to defray to the landowners an exorbitant amount of compensation would defeat the very purpose for which the acquisition was made rather would put the public exchequer replenished by taxing the honest taxpayers to an unnecessary and avoidable heavy burden. Further salient palpable distinction vis-a-vis the case relied upon by the learned counsel for the appellant and the instant case is that the sale consideration pronounced in Ex.PA which is qua a small tract of land is imminently defrayed to the vendor towards acquisition of land comprised in it not for raising a dwelling house or a homestead rather for carrying out of commercial activities. Naturally, when the vendor of Ex.PA seeks to develop the land purchased by him in it for commercial activities, the land comprised in obviously had to fetch a higher sale consideration than it would have fetched had it been acquired or purchased for raising a homestead or a dwelling house. Given the salient distinction in the purpose of acquisition of the land of the landowners/appellants vis-a-vis the land purchased under Ex.PA, inasmuch as the former has been acquired by the respondent/State for the salutary objective of constructing a road as a measure of providing an amenity to the public at large, whereas the land acquired by vendor under Ex.PA has been purchased or acquired for rearing commercial activities on it. Naturally then, on that score the sale consideration comprised in Ex.PA cannot provide a reasonable, fair and just parameter for determining on its strength compensation for the entire stretch of the vast expanse of land acquired by the respondent/State for providing a public amenity.

Consequently, this Court is of the considered view that the judgments as relied upon by the learned counsel for the appellants are discardable. Naturally then the view as adopted by the learned District Judge in dispelling the effect of Ex.PA which pertains to small tracts of land, inasmuch as its not providing a valuable and reckonable parameter for determining on its strength compensation for an immense tract or a vast expanse of land, is a tenable view and ought not to be interfered with.

6. Furthermore, the learned counsel appearing for the appellant has vigorously strived to prevail upon this Court qua the illegality committed by the learned District Judge in omitting to award compensation to the appellants since 1964 when the respondent had taken possession of lands which were ultimately subjected to acquisition in the year 1998. The said argument wanes in the face of the authoritative pronouncement of the Hon''ble Apex Court in R.L. Jain vs. D.D.A., Civil Appeal No. 5515 of 1997, decided on 12.3.2004 wherein it has been mandated that even where the lands of the landowners have been subjected to utilization even prior to theirs having come to be ultimately subjected to acquisition in accordance with law, the landowners are not entitled to receive compensation from the date when their lands came to be subjected to utilization rather they are only entitled to compensation form the date their land is subjected to acquisition in accordance with law. Nonetheless, the judgment aforesaid expounds the view that the remedy, if any, of the land owners for their lands being utilized prior to theirs having come to be subjected to acquisition in accordance with law, is to institute a suit for damages. The view as explicitly pronounced in the judgment as relied upon by the learned District Judge having not been demonstrated by the learned counsel appearing for the appellants to have come to be overruled by a larger Bench of the Hon''ble Apex Court, consequently, when the view expressed in the judgment relied upon by the learned District Judge in declining to the appellants herein the relief of compensation from the date when their lands were subjected to utilization, is a tenable and revertable view and it ought not to be interfered with. However, it is open to the appellants to institute a civil suit for damages against the respondent for their lands having come to be utilized by the respondent, even before they were subjected to acquisition in accordance with law.

7. For the fore going reasons, there is no merit in this appeal which is dismissed accordingly and the judgment of the learned District Judge is affirmed and maintained. All the pending applications also stand disposed of. No costs.