
(2004) 03 P&H CK 0088

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 332 of 1981

Harinder Singh and another

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-03-2004

Acts Referred:

Citation : (2004) 4 RCR(Civil) 13

Hon'ble Judges : Kiran Anand Lall, J

Advocate : Mr. H.S. Gill, Senior Advocate with Mr. R.K. Dhiman, Advocate. Mr. K.K. Gupta, Advocate., Advocates for appearing Parties

Judgement

Kiran Anand Lall, J.—The land of the appellants, measuring 9 kanlas 6 marlas and located in Manimajra, was acquired by the Union of India, after invoking the urgency clause under Section 17 of the Land Acquisition Act, 1894 (to be referred as the Act). The acquisition was for a public purpose viz. for setting up a Glazed Pottery Kiln. The two notifications viz. notifications under Sections 4 and 6 of the Act were issued on the same date viz. 31.3.1976. The compensation awarded by the Land Acquisition Collector, Chandigarh, was at the rate of Rs. 18,000/ per acre. On an application moved under Section 18 of the Act by the appellants, it was enhanced to Rs. 33,600/ per acre by the District Judge vide award dated 6.5.1980. The appellants, by filing this RFA, have claimed further enhancement of compensation to Rs. 1 lac per acre, on the ground that in a case pertaining to the acquisition of another land located at a distance of just half a mile away from the land under reference, the District Judge, Chandigarh, had earlier awarded compensation at the rate of Rs. 3,27,200/ per acre and the same amount of compensation was awarded by him in two other cases bearing LAC Nos. 26 and 16 of 1978, decided vide a common judgment dated 22.8.1979.

2. The Union of India having opposed the claimed enhancement, I have heard arguments addressed by Mr. H.S. Gill, learned counsel for the appellants, and Mr. K.K. Gupta, learned counsel for the respondent.

3. Out of the following three sale instances, relied upon by the appellants

petitioners, the District Judge had relied upon the sale instance covered by mutation Ex. P1 and detailed at serial No. 1 below :

Sr. No.

Exs.

Date of mutation

Area KM

Sale price

Rate (per acre)

1.

P.1

11.4.1975

611

Rs. 26,200/

Rs. 32,000/

2.

P.2

15.4.1975

100

Rs. 4,000/

Rs. 32,000/

3.

P.3

7.2.1974

106

Rs. 18,000/

Rs. 1,10,420/

4. The other two instances covered by mutations P2 and P3 were not taken into consideration as those pertained to the sale of small plots. The mutation, Ex. P1, it may be mentioned related to the sale of a much bigger plot viz. a plot measuring 6 kanals 11 marlas and the transaction covered by it had also taken place within one year of the date of issuance of the notifications (dated 31.3.1976) under Sections 4 and 6 of the Act in respect of the land involved in

the case in hand. Placing reliance on this sale instance and after taking into consideration the general appreciation in the value of the land in question during the intervening period of about one year, fair compensation of the land was assessed at the rate of Rs. 33,600/ per acre by the District Judge. He rightly ignored the five sale transactions relied upon by the Union of India and covered by mutations Exs. R1 to R5 as the compensation awarded by the Land Acquisition Collector himself in respect of the land in question was at a much higher rate than the price at which the land involved in those transactions had been sold.

5. In support of his case for enhancement of compensation, learned counsel for the appellants placed reliance on a judgment of this Court in RFA No. 2608 of 1980, Dharam Vir and others v. The Union of India, decided on 18.8.1981, as in that RFA also, the notification under Section 4 of the Act had been issued just one day prior to the similar notification issued in the instant case viz. on 30.3.1976. Land measuring 54.37 acres situate within the revenue estate of Mani Majra was acquired and the purpose of acquisition was the development and construction of a motor market complex. The land involved was of two different kinds viz. Aabi and Gair Mumkin. The Acquisition Collector awarded compensation at the rate of Rs. 23,500/ per acre for Aabi land and Rs. 12,000/ per acre for Gair Mumkin. As mentioned in the copy of judgment of RFA No. 2608 of 1980, the District Judge, in a reference under Section 18 of the Act, determined the market value of the land as under, irrespective of the different kinds of land involved :

(a) "For the land abutting on Mani MajraMansa Devi Temple road and Mani MajraPanchkula road which was purchased in small plots for construction of shops and houses, the market value would be at the rate of Rs. 2045/ per marla." This is equivalent to Rs. 3,27,200/ per acre.

(b) "The market value of the remaining acquired land would be at the rate of Rs. 33,600/ per acre."

6. However, in the RFA filed against this award of the District Judge (RFA No. 2608 of 1980), this Court, for the purpose of assessing its market value, divided the land into two belts on the basis of its distance from the road and described those belts as the first belt and second belt, and enhanced the compensation as under :

"(i) For the land falling in the first belt, i.e. upto a depth of 140 ft. from the two roads, i.e. Mani MajraMansa Devi Temple road and Mani MajraPanchkula road, the rate of compensation payable to the appellants would be Rs. 2045/ per marla except in the case of claimant in R.F.A. No. 346/81 who would be paid compensation at the rate at which he has purchased the plot which is sought to be acquired.

(ii) For the land falling in the second belt, the rate of compensation would be Rs. 75000/ per acre.

(iii) xxx xxx xxx"

7. Learned counsel representing the appellants contended that as the land in the present case is located in the vicinity of the land falling in the above referred to second belt, its compensation be also enhanced to Rs. 75,000/ per acre (from Rs. 33,600/ per acre). In this connection, he relied upon a Division Bench judgment of this Court reported as Harchal Singh v. The State of Punjab through Land Acquisition Collector, Industries Department, Punjab, Chandigarh, 1991(1) RRR 353 (P&H) : 1991 All India Land Acquisition and Compensation Cases 203, ratio decidendi of which is that the acquired lands of more than one villages deserve to be allowed market rate of the uniform rate, irrespective of the respective potentialities of the lands of different villages. There cannot be, of course, any dispute with this legal proposition but it would, in my view, apply in cases where the purpose of the acquisition of all such lands is same or almost the same. In the case relied upon by the learned counsel for the appellants, the purpose of acquisition of lands of different villages was development and urbanisation of the area and all such land had acquired potential for urbanisation, whereas the purpose of acquisition in the case in hand was totally different. This land was acquired for setting up a Glazed Pottery Kiln, and not for urbanisation of the area. That being so, the appellants cannot be permitted to claim the same amount of compensation as had been awarded in the case relied upon by them. Their land i.e. the land under reference, as described in notifications issued under Sections 4 and 6 of the Act, was waste and arable land and it was acquired for the purpose of setting up a Glazed Pottery Kiln. Therefore, this land cannot be equated with the above referred to land of the second belt which, as already stated above, had been acquired for a totally different purpose viz. construction of a Motor Market Complex.

8. Reference may also be made to an unreported judgment of the Supreme Court, relied upon by the learned counsel representing the Union of India. This judgment was delivered in 1993(3) RRR 221 (SC) : Civil Appeal Nos. 335342 of 1982, Inder Singh and others v. Union of India etc., on 27.4.1993, and the land involved therein was also located in Mani Majra and was a part of the same Hadbast in which the land involved in the present case falls viz. Hadbast No. 375. The purpose of acquisition was also almost similar viz. setting up of a brickkiln. The Supreme Court, after considering every thing, awarded different amounts of compensation for different kinds of land (though forming part of same Hadbast). Relevant portion of the judgment is reproduced below :

"The acquired lands are situated on the western side of Manimajra Panchkula road and the motor market was situated on the other side of the road. Therefore, the market value of the land acquired for motor market does not render any assistance as comparable prices. Obviously for that reason the same learned Single Judge while deciding both the appeals on the same day declined to enhance the market value to these lands while he awarded to lands in 2nd belt at Rs. 75,000/ per acre. We have no information whether any appeal was filed

against that judgment. But certainly the facts of these cases would assist us to assess a fair and reasonable compensation in fixing the market value though an amount of guess work is involved. We are conscious of the fact that it should not be founded on feats of imagination hedged with undue emphasis of compulsory deprivation of the possession of the land of the appellants, for the exercise of State's power of eminent domain, statutory solatium is the premium the State pays. Therefore, the approach should be pragmatic to recompense the appellant to secure alternative lands or to invest in profitable business for rehabilitation. It is seen that the Reference Court awarded a sum of Rs. 33,600/ per acre to Abi land. There is a steady rise in prices as reflected in the judgment in the other appeals relied on by the learned counsel for appellants. The High Court also recorded a finding in that behalf in those appeals. The lands are situated in the same H.B. No. 375, though at different places and distance having future potential development. Considering the totality of the facts and circumstances, we find that market value @ Rs. 42,000/ per acre would be just and fair. This value should be for Abi and for Barani lands at Rs. 38,000/ per acre and the market value to gair mumkin land are Rs. 12,000/ per acre awarded by the Civil Court is confirmed."

9. The Supreme Court had, thus, given compensation, in respect of the gair mumkin land acquired for setting up a brickkiln, at the rate of Rs. 12,000/ per acre. The land in question also falls within the category of Gair Mumkin or waste/ arable land and is a part of the same Hadbast viz. Hadbast No. 375. The purpose of acquisition is also almost the same viz. setting up a Glazed Pottery Kiln. But, the rate of compensation awarded by the District Judge is Rs. 33,600/ per acre, as against the amount of compensation awarded at the rate of Rs. 12,000/ per acre by the Supreme Court for the same kind of land falling in same Hadbast and acquired for almost the same purpose. Of course, as the Union of India has not come up in appeal, the compensation awarded cannot be reduced by this Court, on the basis of the Supreme Court judgment. But, this judgment is definitely relevant to the present case for holding that in view of this judgment the appellants are not entitled to any further enhancement.

10. In view of the above discussion, I do not find any merit in this appeal and the same shall stand dismissed, leaving the parties to bear their own costs.