(1996) 10 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 729 of 1985

Harinderpal Singh and Another APPELLANT

Vs

Punjab State and Others RESPONDENT

Date of Decision : 15-10-1996

Acts Referred:
Land Acquisition Act, 1894 — Section 21

Citation : (1997) 116 PLR 447 : (1997) 3 RCR(Civil) 431

Hon'ble Judges : V.S. Aggarwal, J;M.S. Liberhan, J

Bench : Division Bench

Advocate : Ashok Aggarwal and Hemant Sarin, for the Appellant; S.S. Saron, Addl. A.G. and M.C. Berry, DAG, for the Respondent

Judgement

M.S. Liberhan, J.—The undisputed skeletal morsel facts as provided by learned counsel for the parties during the course of arguments to dispose of the letters patent appeals and regular first appeals of the claimants as well as the State, run thus.

2. The land of villages Kala Ghanu Pur, Hamidpur, Ghumanpura, Kalhania and Wadala Bhitewad were acquired for ''extension of cantonment'' at Amritsar vide notifications u/s 4 of the Land Acquisition Act, 1894 dated 10.6.1977, 22.7.1977 1.6.1977, 22.7.1977 and 5.5.1978 respectively. The area of land acquired from village to village ranged from about 119 kanals to 11513 kanals. The collector vide his award dated 28.3.1978 with respect to village kala Ghanu Pur treating the land as agricultural awarded compensation @ Rs. 16,500/- per acre for Chahi, Rs. 12,000/- per acre for Barani, Rs. 6000/- per acre for Banjar Qadim and Rs. 5000/per acre for Ghair Mumkin. The collector vide his award dated 28.3.1978 with respect to village Hamidpur awarded compensation at the rate of Rs. 16,500/- per acre for Chahi land, Rs. 12,000/- per acre for Barani and Rs. 5000/- per acre for Gair Mumkin. With respect to village Ghumanpura the Collector vide his award dated 28.3.1978 awarded compensation at the rate of Rs. 16,500/- per acre for Chahi, Rs. 12,000/- per acre for Barani, Rs. 9000/- per

acre for Banjar jadid, Rs. 6000/- per acre for Banjar Qadim and Rs. 5000/- per acre for Gair Mumkin. The Collector vide his award dated 20.5.1982 awarded compensation with respect to village Kathania at the rate of Rs. 18,150/- per acre for Chahi, Rs. 12,000/- per acre for Barani, Rs. 6000/- per acre for Banjar and Rs. 5000/- per acre for Gair Mumkin and with respect to village Wadala Bhitewad the Collector vide his award dated 22.6.1983 awarded compensation at the rate of Rs. 16,500/- per acre for Chahi land. The claimants sought reference u/s 18 of the Land Acquisition Act, claiming market value of their land ranging from Rs. 1 lac per acre to Rs. 1.50 lacs per acre. Apart from the compensation, they claimed benefits under various heads as provided u/s 23(1-A) of the Act.

3. The learned District Judge vide his award dated 24.12.1981 enhanced compensation at a uniform rate of Rs. 40,000/- per acre with respect to village Kala Ghanu Pur; with respect to village Hamidpur he vide his award dated 30.4.1983 awarded compensation at the rate of Rs. 50,000/- per acre with respect to the land situated within 60 karams from the road and Rs. 40,000/- per acre with respect to the land situated between 60 karams and 120 karams from the road. With respect to Chain land, he awarded compensation @ Rs. 25,000/- per acre, for Barani at the rate of Rs. 18,000/- per acre, for Gair Mumkin at the rate of Rs. 8000/- per acre. The learned Distt. Judge by his award dated 23.12.1980 with respect to village Ghumanpur a enhanced the compensation at the same rate as enhanced in the case of village Hamidpur. With respect to village Kathania, learned District Judge vide his award dated 31.7.1987 granted/ enhanced compensation at a uniform rate of Rs. 18,150/per acre, though we may hasten to add that in one case, he awarded compensation at the rate of Rs. 36,000/- per acre with respect to acquisition of land of the same village by same notification and for the same purpose. The learned District Judge vide his award dated 25.2.1988 enhanced compensation at a uniform rate of Rs. 18,000/- in seven references per acre, while by separate award dated 11.9.1992 with respect to 22 claim petitions, the awarded compensation at the rate of Rs. 39,000/per acre.

4. All the awards given by learned District Judge were appealed against. With respect to village Hamidpur, learned Single Judge vide his judgment dated 18.12.1984 assessed the market value of the land at a uniform rate of Rs. 16,500/- per acre, which judgment has been appealed in this LPA. Similarly with respect to village Ghumanpura the learned Single Judge vide his judgment dated 18.12.1984 assessed the market value of the land at a uniform rate of Rs. 16,500/- per acre against which LPA No. 684 of 1985 is under consideration. So far as the award dated 31.7.1987 of learned District Judge with respect to village Kathania and award dated 25.2.1988 with respect to village Wadala Bhitewad are concerned, they are impugned and are under consideration in RFA No. 110 of 1988 and 1063 of 1988. All the above referred LPAs and RFAS are being disposed of by this common judgment as it is accepted by learned counsel for the parties that not only mostly but exactly the same questions of law and facts are involved in all the cases and the market value of the land has to be assessed on the basis

of almost same evidence, particularly when an award given by learned District Judge stands affirmed by this Court and Hon''ble the Apex Court with respect to the same and similar nature of the land

5. With all fairness to the counsel for the Union of India, his ability with which he has assisted the Court and further helped in reducing the time for disposal of these cases, is highly appreciated. It is not disputed that as envisaged by the Northern India Canal Drainage Act, the entire land falls within the definition of a ''command area'' which categorically means that the entire land is in fact one and can be treated one viz. ''Chahi land'' in nature, irrespective of the fact that some landowners might have ignored their lands for cultivation for the reasons best known to them. Mere fact of the land being not cultivated and remained so or its description in the revenue record as Barani, Gair Mumkin etc. etc. will not deprive the Character of land as ''Chahi land'' It is for the landlords or the claimants to cultivate or not to cultivate or put to some other use. Thus, if we may venture to state, that the entire acquired land with respect to all the villages is Chahi and can be termed to be so and it has to be assessed as such.

6. In order to assess the potentiality and locality as well as nature of the land and comparability of the instances on which the counsel for the claimants relied, the counsel for the parties have very fairly put in on the record a site plan of the locality as marked ''PX'' The factual position in the site plan rather the site plan is not disputed. From going through the site plan, it can be inferred that the acquired land is around the three famous roads and one of the said roads is known as ''Sher Shah Suri Road''. Besides this one can infer from the site plan that there were scattered houses, factories etc. all along the said roads. The fact that the locality of most of the acquired land is between the border of Pakistan and India which cannot loose sight of; one can take judicial notice of it. In view of the rising trend of the prices, the irrigated land described as Chahi cannot be permitted to be available so cheap at which the Union of India wanted to take. A fair treatment is expected from the Union of India for agricultural produce, particularly when the compensation is paid to them by bits. The compensation which the landowners should have received in 1987 is being paid in 1996 when even bit of the land be not available to them in the market at the price which would be paid. Without being influenced with this consideration while assessing the market value, it is not disputed that in case of village Kala Ghanu Pur the market value of the Chahi agricultural land has been accepted and paid by Union of India at the rate of Rs. 40,000/- per acre. It will be highly perverse to deprive the similarly situated persons with respect to the similar quality and nature of the land of the adjoining villages, to assess the market value at Rs. 16,500/per acre for chahi land, at which we feel even sand domes may not be available, particularly when even the Collector has not accepted the said market value of the land with respect to villages, Kathania and Wadala Bhitewad, with respect to said villages, the Collector has assessed the market value of the chahi land at the rate of Rs. 18,500/- and Rs. 16,500/- per acre. The Union of India by their own act accepted that the market value offered and shown by the sale deeds

produced by them is not the correct market value. So far as parity with respect to the quality, nature, locality and potentiality of the land compared with respect to the land of relevant award is concerned, a perusal of the said site plan mark (PX) shows that the acquired land cannot be treated differently with the land for which the compensation has been paid at the rate of Rs. 40,000/- per acre. The learned counsel for U.O.I. has contended, that the land which is nearer to the Guru Nanak University was of higher market value. There is no dispute rather it is well settled that some guess work has to be done in assessing the market value. In the case in hand the market value is being determined keeping in view the potentiality of the land for industrialisation or urbanisation, though compensation or market value is assessed as agricultural land. The market value of the land is being assessed taking into consideration the qualitative nature of the same whether it is Nehri or otherwise, keeping in view the principle on which a willing vendor will offer to a willing vendee with respect to particular nature of the land. There is no dispute rather fairly accepted and conceded by counsel for the parties that the market value of the Nehri land in the same locality is the same irrespective of the fact whether it is nearer or away from the town particularly when the State has already put restrictions on the sale-purchase of the land and changing the nature of the same since about two years before the start of acquisition proceedings. In the present rising trend of the prices of the real estate the prices change monthly. It will be totally unfair to assess the market value of the land at the rate other than the prevalent two years preceding the date of notification u/s 4 of the Act. Keeping in view the statement of Halqa Patwari and accepted position that the entire land is a command area & capable of irrigation, we assess the market value at the same rate with which the market value of the same or similar nature of land of village Kala Gharu Pur has been assessed that is at a uniform rate of Rs. 40,000/- per acre. Thus the impugned award of the Hon''ble Single Judge as well as of the District Judge are liable to be modified in view of the above observations as the market value of the land acquired would be Rs. 40,000/per acre irrespective of its nature or quality whether it is nearer to the road or away from the same. The belting system to assess the market value of the land has specially been ignored in this case keeping in view the peculiar facts like contiguity of the villages, nature & quality of land, same being assessed as agricultural land specially when even the Collector himself has not adopted the belting system to assess the market value. We may hasten to add that the factors like continuity of the land to be in the municipal town rather part of it forming part of municipal limits are the added factors to treat and assess the market value of the land at a uniform rate ignoring the belting system.

7. The counsel for the parties have fairly conceded that the benefit of provision of Section 23(1-A) would be available only to the claimants of the villages Kathania wherein award was given by the Collector on 20.5.1982 and Wadala Bhitewad for which award was given by the Collector on 22.6.1983. Thus, the claimants of the said villages would be entitled at the rate of Rs. 12/- percentum per annum on

the amount of the market value assessed from the date of notification Under Sections 4 of the Act dated 22.7.1977 and 5.5.1978 to 20.5.1982 and 22.6.1983 respectively.

8. To be fair to the counsel for the Union of India we may notice the judgment in Priya Vart and another Vs. Union of India, cited by him to impress that the market value of the land be assessed on the basis of comparability of the same with other land. There is no dispute with respect to the law laid down in the said judgment, However, in view of the peculiar facts and circumstances of the case as referred to above wherein market value of the land has been assessed as agricultural land at the qualitative basis of nature of land with comparable land of similar nature. The law laid down in Priya Vart case (supra) to assess the market value of the land on the comparability system can be applied to the land in dispute in letter and spirit, particularly when the whole acquired land is same or similar in nature.

9. The learned counsel for the Union of India further relied upon on Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, in order to contend that certain factors as laid down in the said judgment should be kept in view while assessing the market value. There can be no dispute with respect to methodology which ordinarily should be kept in view while assessing the market value of the land. In view of the peculiar, even conceded facts and circumstances of the case, we have come to a conclusion that the market value of the land in the cases in hand is required to be assessed on the qualitative nature of the land and on the principle of which a willing vendor would offer to a willing vendee treating the land as agricultural nehri land. We have assessed the market value in this case keeping in view the principles laid down in the judgment cited above. So far as judgment in Padma Uppal v. State of Punjab AIR 1977 SC 590 is concerned, the same is not applicable to the facts and circumstances of the present case, particularly in view of the facts that the market value in the present case has been assessed on the basis of an award of learned District Judge dated 24.12.1981 with respect to village Kala Ghanu Pur, which was affirmed up to Hon''ble the Apex Court. The land measuring 119 kanals onwards cannot be said to be a small plot in order to assess the market value. Otherwise too the Union of India is expected to be fair in treating their agriculturists equally. Once they have accepted and paid the market value of similar nature of land @ Rs. 40,000/- per acre with respect of village Kala Ghanpur, they cannot discriminate against the claimants of other villages particularly when they are not only similarly situated, but land are of some nature, similarly situated, acquired as one chunk for one purpose though may be in different revenue block.

10. Thus in view of the observations made above, the appeals are disposed of and the awards of learned District Judge are modified to the extent that the claimants of aft the five villages would be entitled to the compensation at the rate of Rs. 40,000/per acre irrespective of the nature of the land. The claimants would be entitled to statutory interest as provided by the Land Acquisition Act, as

amended. They would also be entitled solatium at the rate of 30%. The claimants with respect to village Katbania and Wadala Bhitewad would be entitled to 12% per annum on the market value assessed viz. Rs. 40,000/- per acre from the date of notifications u/s 4 i.e. 22.7.1977 and 55.1978 to the dates of award of the Collector i.e. 20.5.1982 and 22.6.1996 respectively.