
(2005) 08 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 31 of 1990

Hissar Improvement Trust

APPELLANT

Vs

President, Tribunal Improvement Trust, Hissar and others

RESPONDENT

Date of Decision : 03-08-2005

Acts Referred:

Citation : (2006) 1 PLJ 663 : (2005) 4 RCR(Civil) 137

Hon'ble Judges : H.S.Bedi, J and Viney Mittal, J

Advocate : Shri C.B. Goel, Advocate. Mr. Shailender Jain, Advocate., Advocates for appearing Parties

Judgement

Viney Mittal, J.—This judgment shall dispose of a bunch of 10 Letters Patent Appeals as all the appeals have been directed against the judgment of the learned Single Judge dated August 25, 1989. Whereas seven appeals have been filed by the Hissar Improvement Trust, the remaining three appeals have been filed by the claimants.

2. Vide a notice dated July 9, 1974, issued under Section 36 of the Punjab Town Improvement Act, 1922 (hereinafter referred to as the "Punjab Act"), land measuring 8686.8 square yards situated in the city of Hissar was sought to be acquired for the Scheme No. 5A framed under the Punjab Act. Subsequently, the aforesaid scheme was accorded sanction vide a notification dated April 15, 1975 by the competent Government and a notification under Section 42 of the Punjab Act was issued on May 6, 1975, acquiring the said land. It is not in dispute that a notice under Section 36 of the Punjab Act corresponds to Section 4 of the Land Acquisition Act (hereinafter referred to as the "Act"), whereas a notification under Section 42 of the Punjab Act corresponds to Section 6 of the Act.

3. Vide award dated April 26, 1976, Land Acquisition Collector, Hissar assessed the market value of the acquired land. He classified the land in three zones. For the land in ZoneA, measuring 1209 square yards, market value was fixed at the rate of Rs. 100/ per square yard; with regard to the land falling in ZoneB measuring 402 square yards, the market value was assessed at the rate of Rs.

60/ per square yard; and with regard to the remaining land falling in ZoneC, measuring 7075 square yards, the market value was fixed at the rate of Rs. 40/ per square yard. Separate assessment was made with regard to building and superstructure standing on the acquired land. The claimants were also held entitled to solatium at the rate of 15% (as prevalent at the time). The claimants were not satisfied with the amount of compensation fixed by the Collector. They sought a reference under Section 18 of the Act. The matter was, accordingly, referred for assessment to the Tribunal, Improvement Trust, Hissar.

4. Vide an award dated September 29, 1987, the Tribunal assessed the market value of the aforesaid acquired land by classifying the acquired land in two belts. For the land falling in beltA, (fronting the National Highway No. 10, HissarDelhi Road about 300 feet in length and 50 feet in depth), the market value was assessed at the rate of Rs. 400/ per square yard. The remaining land in beltB was assessed at the rate of Rs. 350/ per square yard. The claimantlandlords were also held entitled to solatium at the rate of 30% and interest as per the amended provisions of the Act. The Improvement Trust, Hissar as well as the claimants challenged the aforesaid award before this Court by filing various writ petitions. All the aforesaid writ petitions were heard together by the learned Single Judge and were disposed of by a common judgment dated August 25, 1989. The learned Single Judge did not approve the belting system adopted by the Tribunal and also held that the assessment made by the Tribunal was arbitrary and erroneous. The claimantlandowners were held entitled to the market value at the rate of Rs. 900/ per square yard. Consequently, the writ petitions filed by the claimants were allowed with costs. However, the writ petitions filed by the Improvement Trust were dismissed.

5. The Improvement Trust has, accordingly, filed the Letters Patent Appeals challenging the enhancement of compensation by the Tribunal as well as by the learned Single Judge. The claimants, however, have filed the appeals claiming further enhancement.

6. We have heard the learned counsel for the parties at some length and have also gone through the record of the case.

7. Learned counsel for the appellantTrust has argued that the learned Single Judge has committed an error of law and jurisdiction by interfering in the award of the Tribunal, thereby enhancing the compensation for the acquired land. To elaborate the aforesaid argument, it has been contended by the learned counsel for the Trust that in proceedings under Articles 226 and 227 of the Constitution of India, it was not open to the learned Single Judge to enhance the compensation awarded by the Tribunal and, therefore, the judgment of the learned Single Judge granting further enhancement of compensation was liable to be set aside on this short ground alone. This argument of the learned counsel for the Trust has been controverted by the claimantlandowner Shri Shailender Jain, who has appeared in person. It has been argued on behalf of the claimants that the award of the Tribunal was not only arbitrary but was also based upon

complete misapplication of law. Further there was an error apparent in the award of the Tribunal inasmuch as the Tribunal had assessed the market value on belting basis which was not legally sustainable even as per the findings recorded by the learned Tribunal himself. It has further been argued by the claimantlandowners that the Tribunal had completely overlooked the evidence available on the record and had assessed the compensation merely by a rule of thumb which was contrary to the material available on the record. In these circumstances, it has been argued that this Court has ample jurisdiction while exercising the power under Articles 226 and 227 of the Constitution of India.

8. To appreciate the aforesaid rival contentions, certain observations made by the Apex Court need to be noticed. In the case of State of A.P. v. P.V. Hanumantha Rao and another, 2003(10) Supreme Court Cases 121, the Apex Court while examining the correctness of an order passed under the provisions of Andhra Pradesh Land Grabbing (Prohibition) Act, 1982, noticed the following facts :

"28. On examination of the relevant provisions of the Act of 1982 and in the light of its objects and reasons, it is apparent that in cases of alleged landgrabbing, exclusive jurisdiction is conferred on the Special Court. Jurisdiction of a Civil Court on such subjectmatter stand ousted. The Special Court has been conferred powers of a civil Court to examine all questions of title and possession with respect to the land alleged to have been grabbed. The findings of the Special Court are binding and conclusive on the parties and all others having interest in the land which is alleged to have been grabbed. Against the decision of the Special Court, no appeal is provided. The only remedy of the aggrieved party is to approach the High Court under Article 226 or 227 of the Constitution of India. It is on the basis of the aforesaid provisions that we have to determine the scope of interference of the High Court in writ jurisdiction in the judgment and decision of the Special Court....." (emphasis supplied)

Thereafter it was observed as follows :

"30. True it is that remedy of the writ petition available in the High Court is not against the "decision" of the subordinate Court, tribunal or authority but it is against the "decisionmaking process". In the "decision making process", if the Court, tribunal or authority deciding the case, has ignored vital evidence and thereby arrived at erroneous conclusion or has misconstrued the provisions of the relevant Act or misunderstood the scope of its jurisdiction, the constitutional power of the High Court under Articles 226 and 227 can be invoked to set right such error and prevent gross injustice to the party complaining.

31. In the case of Surya Dev while examining the nature and ambit of power of the High Court to issue writs under Article 226 or 227 of the Constitution, the abovestated legal position has been recognised by observing thus :

"39. Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Article 226 or

227 of the Constitution cannot be tied down in a straitjacket formula or rigid rules. At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge."

32. This Court has recognised the right of the High Court to interfere with orders of subordinate Courts and tribunals where (1) there is an error manifest and apparent on the face of the proceedings, such as, when it is based on clear misreading or utter disregard of the provisions of law, and (2) a grave injustice or gross failure of justice has occasioned thereby.

33. No doubt, it was held that neither in exercise of the power of writ under Article 226 nor in supervisory jurisdiction under Article 227, the High Court will convert itself into a Court of appeal and indulge in reappreciation or evaluation of evidence. The power of the High Court in writ jurisdiction to interfere where important evidence has been overlooked and the legal provisions involved are misinterpreted or misapplied has been recognised even in the case of Sawarn Singh on which strong reliance was placed on behalf of the State. The relevant observations are:

"13. In regard to a finding of fact recorded by an inferior tribunal, a writ of certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law."

9. In the case of Shail (Smt.) v. Manoj Kumar and others, 2005(1) RCR(CrL.) 384 (SC) : 2004(4) Supreme Court Cases 785, the Apex Court while relying upon the law laid down in Surya Dev Rai v. Ram Chander Rai, 2004(1) RCR(Civil) 147 (SC) : 2003(6) SCC 675 held that in exercise of power of superintendence conferred under Article 227 of the Constitution of India on the High Court, the High Court does have power to make such directions as the facts and circumstances of the case may warrant, may be, by way of guiding the inferior Court or tribunal as to the manner in which it would proceed hence and the High Court has the jurisdiction also to pass itself such a decision or direction as the inferior Court or tribunal should have made. Although it was held that the jurisdiction under Article 227 of the Constitution is to be exercised sparingly and with care and caution but is certainly one vesting in the High Court and meant to be exercised in appropriate cases.

10. A Division Bench of this Court while deciding L.P.A. in the case of Ludhiana Improvement Trust v. Hari Shanker, 1986 Recent Revenue Reports 540 (P&H) held as under :

"The only contention raised before us by the learned counsel for the appellant is that the learned Single Judge should not have interfered with the determination of the compensation in exercise of his jurisdiction under Article 226 of the Constitution of India. A similar contention was raised before the learned Single

Judge and was repelled on the ground that the Tribunal had ignored the relevant evidence. In our view, the learned Single Judge was right in going into the legality of the award of the Tribunal as the relevant evidence was ignored while determining the amount of compensation."

In view of the law laid down by the Hon^{ble} Supreme Court of India and also the Division Bench of this Court as noticed above, it is apparent that when there is an arbitrary exercise of power or an error apparent on the face of record or any other error of law committed by a Tribunal, then this Court has the jurisdiction under Articles 226 and 227 of the Constitution of India to correct the aforesaid errors. It is well settled by now that when there is misreading of evidence, misapplication of law or ruling out of any evidence available on the record or when the order does not disclose the reasons i.e. the decision making process is not disclosed to the Court, then this Court always interferes and comes to the rescue of the aggrieved party. The learned Single Judge while evaluating the award of the Tribunal has gone into the details of the documents and the reasoning process adopted by the Tribunal and thereafter observed that the award of the Tribunal was arbitrary and that the belting system was not justified. We have also examined the award of the Tribunal. We entirely agree with the reasoning given by the learned Single Judge. For the reasons we shall give in later part of this judgment, we entirely uphold the assumption of jurisdiction by the learned Single Judge. Before parting with this order, we notice that the objection whatsoever with regard to jurisdiction of this Court for entertaining the petitions filed by the claimantlandowners under Articles 226 and 227 was never raised by the Improvement Trust before the learned Single Judge. It is only for the first time during the pendency of the present Letters Patent Appeals that the aforesaid objection has been raised.

11. This brings us to the merits of the controversy.

The Tribunal had himself inspected the site on August 24, 1987. After inspecting the site, the following observations were made by the Tribunal in his award passed finally :

"Having had the advantage of inspecting the site on August 24, 1987, I found that it is situate cheek by jowl to the main Post and Telegraph Office which is housed in a new huge building. Opposite to the site in dispute is situate the municipal office across the National highway No. 10 (HissarDelhi road). The main commercial centres namely, bazars inside Nagori Gate and Rajguru Market are situate at a distance of less than a furlong from the acquired land. Jambeshwar market has come up in the acquired land which comprises of three blocks in which about 3540 shops have been built. I had mentioned the names of 31 shops out of 3540 shops in para 2 of the inspection note. Old Anaj Mandi road, Devi Bhawan road pass on either side of Parijat Cinema which is situate on the other side of the crossing opposite the acquired land at a distance of 3040 yards from it. The acquired land is situate in the heart of the town. The distance of Urban Estate No. 1 from the acquired land is less than a furlong. In between the

acquired land and the Urban Estate No. 1 are the buildings of the main Post & Telegraph Office and Telephone Exchange which are housed in newly constructed buildings. A new shopping market has come in the Urban Estate No. 1. Neelam Cinema is situate at a distance of less than 50 yards. Elite Cinema and railway station are situate at a distance of less than one km., Dayanand College and F.C. College at a distance of half a km., bus stand and civil hospital at a distance of half a km. from the acquired land. There are banks and offices of the industrial houses situate close to the acquired land on Old Anaj Mandi road, Highway No. 10 and Urban Estate No. 1."

From the aforesaid observations made by the Tribunal himself, it is apparent that the acquired land which was only approximately 8000 sq. yards was situated within the heart of the city, adjacent to main Post and Telegraph Office, and opposite to acquired land the building of municipal committee was situated. The main commercial centres, bazars and main Jambeshwar market was adjacent to acquired land. Cinema houses were also situated at the distance of 3040 yards from the same. It is also not in dispute that the aforesaid acquired land situated within the heart of Hissar city was surrounded by roads on three sides.

12. Although the Land Acquisition Collector had classified the land in three categories but the aforesaid action was challenged by the claimant landowners in the reference proceedings before the Tribunal. The claimants had claimed that taking into consideration the advantageous position of the land and its location in the heart of the city and the developed commercial surroundings, the aforesaid classification into three separate categories for such a small piece of land was wholly unjustified. The learned Tribunal in his award has noticed the aforesaid contention of the claimants. However, no reasoning was given by the Tribunal to reject the aforesaid contention. While assessing finally the market value of the acquired land, the acquired land was divided into two belts, beltAfronting the National Highway No. 10 HissarDelhi Road about 300 feet in length and 50 feet in depth; the remaining land was classified as beltB. Therefore, it is apparent that while a specific challenge was made by the claimantlandowners with regard to the belting system adopted by the Land Acquisition Collector, no reasons were given to adopt another belting system by the Tribunal. When the land was situated within the heart of the city and the entire acquired area was only measuring about 8000 square yards and the entire acquired land was abutting on three sides by roads, then there was absolutely no justification for the aforesaid belts. Learned Single Judge has done away with the aforesaid belting system and has rightly held that keeping in view the facts and circumstances of the case, the belting system adopted by the Tribunal was not called for. We affirm the aforesaid findings recorded by learned Single Judge and hold that the belting system which was adopted by the Land Acquisition Collector as well as by the Tribunal was wholly unjustified and ignoring the facts and circumstances of the case and the material available on the record.

13. This brings us to the market value of the acquired land. The claimant

landowners had produced 16 sale instances before the Tribunal during the reference proceedings. The Tribunal in his award primarily relied upon four sale instances i.e. dated October 23, 1972, two sale instances of January 31, 1973 and a sale instance of March 6, 1974. All the remaining sale instances were ruled out of consideration as the same were either executed much after the acquisition in question or were much before in point of time to the said acquisition. Some of the sale instances were ruled out of consideration due to distance of place from the acquired land. Similarly, the Tribunal also ruled out of consideration the sale instances relied upon by the Trust. It was observed by the Tribunal that the Trust had not given distances of the site underneath property of the sale instances relied upon by it. Although their location was depicted in the site plan Ex. RW3/1, still the said sale instances had been executed in the years 1968 and 1969 i.e. much earlier to the acquisition in question. Some of the sale instances relied upon by the Trust were with regard to the sale of such lands which were far away from the acquired land. After ruling out of consideration the sale instances relied upon by the Trust and the majority of sale instance relied upon by the claimants, the learned Tribunal made the assessment of the acquired land by making the following observations :

"11. To revert back to the chart of the sale exemplars proved by the claimants, it is of real note that the first four sale transactions of plot Nos. 4, 87, 88 and 45 situate in Urban Estate No. 1 were of the area of 27.08 sq. yards each. These were small plots on which a single shop of a small size could have only been raised. The layout and the development charges, roads, lanes, sanitation, street etc. were included in it."

12. Thus, in view of the factual and legal position discussed above, I fix the value of the acquired land at Rs. 400/ for belt A fronting the National Highway No. 10 Hissar Delhi Road about 300 feet in length and 50 feet in depth and Rs. 350/ per square yard for the rest of the acquired land together with 30% solatium and interest as envisaged under Sections 23(2) and 28 of the L.A. Act, 1894, as amended by the Act 68 of 1984."

From the aforesaid observations made by the Tribunal, it is apparent that no reasoning whatsoever was given by the Tribunal for fixing the market value of the acquired land at the rate of Rs. 400/ for belt A and Rs. 350/ for belt B, neither any reasoning was given for classifying the land in two categories. It is, thus, apparent that an arbitrary rule of thumb was adopted by the Tribunal while making the assessment in question, therefore, learned Single Judge, in our view, was fully justified in reassessing the material available on record and giving his assessment of the market value on the basis of the aforesaid material.

14. A perusal of the judgment of the learned Single Judge shows that primarily the sale instance of March 6, 1974 whereby 27 square yards of plot in Urban Estate No. 1 was sold for Rs. 32,500/ i.e. at the rate of Rs. 1200.14 per square yard was taken into consideration. The aforesaid sale instance was also relied upon because of the fact that the said sale transaction was executed on March 6,

1974 i.e. a few months prior to the date of present notification i.e. July 9, 1974. However, taking into consideration the fact that the said sale transaction was of a small plot of land, a cut of 25% on the value of the aforesaid plot was applied. Accordingly, the learned Single Judge assessed the market value of the acquired land at the rate of Rs. 900/ per sq. yard. During the course of arguments, it has not been disputed by the learned counsel appearing for the Trust that the aforesaid plot reflecting the sale instance dated March 6, 1974 was only situated at a distance of 379 yards away from the acquired land, as has been noticed by the learned Single Judge also.

15. Learning Counsel appearing for the Trust has, however, argued that the aforesaid sale instance could not have formed the basis for assessing the market value of the acquired land since the aforesaid plot was only measuring 27 square yards and, therefore, the sale price of the aforesaid plot could not reflect the market value of the present acquired land.

16. Before commenting upon the aforesaid argument of the learned counsel for the Trust, we may notice certain observations made by various Courts regarding the principles, which have to be kept into consideration while assessing the market value of the acquired.

17. It has been held by the Apex Court in the case of Administrator General of West Bengal v. Collector, Varanasi, 1988(1) RRR 480 (SC) : AIR 1988 Supreme Court 943 that the market value of a piece of property for the purpose of Section 23 of the Land Acquisition Act is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. Prices fetched for similar lands with similar advantages and potentialities under bona fide transactions of sale at or about the time of the preliminary notification are the usual, and indeed the best, evidences of market value.

18. The aforesaid principle was again reiterated by the Apex Court in the case of Mehta Ravindrarai Ajitrai (deceased by LRs) and another v. State of Gujarat, 1989 RRR 243 (SC) : AIR 1989 Supreme Court 2051.

19. The generally accepted principle while assessing the market value is that while assessing the market value for the acquired land, the prices for small plots can be taken into consideration and a reasonable cut can be applied while reaching the fair price of the acquired land.

20. However, the Hon"ble Supreme Court of India in the case of Bhagwathula Samanna and others v. Special Tehsildar and Land Acquisition Officer, 1992(1) RRR 257 (SC) : 1992 LACC 314 observed as follows :

"The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land because of advantageous

position is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted. With regard to the nature of the plots involved in these two cases, it has been satisfactorily shown on the evidence on record that the land has facilities of road and other amenities and is adjacent to a developed colony and in such circumstances it is possible to utilise the entire area in question as house sites. In respect of the land acquired for the road, the same advantages are available and it did not require any further development. We are, therefore, of the view that the High Court has erred in applying the principle of deduction and reducing the fair market value of land from Rs. 10/ per square yard to Rs. 6.50 per sq. yard. In our opinion, no such deduction is justified in the facts and circumstances of these cases."

21. A Division Bench of Madras High Court in *Special Tehsildar (Adi Dravidar Welfare) v. Abdul Reguman*, 1996 LACC 394 observed as follows :

"In our view the observation made by the Supreme Court is squarely applicable to the case in hand. Admittedly, the land, in question is already in a developed area and situated in an advantageous position and quite suitable for building purpose. It is also proved in evidence that the land in question has all the amenities such as roads, drainage, electricity, communications etc. Therefore, we are of the view that the learned Subordinate Judge is not justified in deducting 20% from the market value. We, therefore, set aside that part of the order of the learned Subordinate Judge, fixing the market value at Rs. 1,325/ per cent less 20%. The crossobjection is, therefore, allowed and the order of the Subordinate Judge is modified to this extent.

Thus it is apparent that in a given case and in facts and circumstances permitting, even the price fetched by a small plot of land can be accepted as the market value for the lands which had been acquired adjacent to a developed colony. The location of the acquired land and proximity to the sale instance is the main consideration.

22. In view of the observations made by the Apex Court in *Bhagwathula Samanna's* case (supra) and the Division Bench of the Madras High Court in *Abdul Reguman's* case (supra), we cannot accept the argument of the learned counsel for the Trust that the price reflected by the sale instance dated March 6, 1974 could not have been treated as the basis for determining the market value of the acquired land in the present case.

23. Even otherwise, learned Single Judge has taken note of the other sale instances which took place in the years 1972 and 1973 in Urban Estate No. 1. It has been observed by the learned Single Judge that providing normal appreciation of the value to the aforesaid sale prices, the market value of the acquired land would still come to Rs. 900/ per sq. yard.

24. Still further, the various sale instances relied upon by the Trust had been

rejected by the learned Tribunal and even the learned Single Judge has found that there was absolutely no justification to rely upon the said sale instances, since the land covered under the aforesaid sale instance was far away from the present acquired land.

25. Since we have already noticed above, that the Tribunal had not given any reasoning for fixing the market value of the acquired land at the rate of Rs. 400/ per sq. yard for beltA and at the rate of Rs. 350/ per sq. yard for beltB and, therefore, the learned Single Judge was wholly justified in exercising jurisdiction under Articles 226 and 227 of the Constitution of India to correct the aforesaid error and fix the market value of the acquired land on the basis of the material which was already available on the record.

As a result of the aforesaid discussion, we uphold the findings recorded by the learned Single Judge and affirm the assessment of the market value of the acquired land at the rate of Rs. 900/ per sq. yard.

26. It has been agreed between the learned counsel for the Trust and the claimantlandowner that the provisions of Section 23(1A) of the Act shall not be applicable to the claim of the claimantlandowners and, as such, the claimantlandowners shall not be entitled to any benefit on that account.

In view of the aforesaid agreement we hold that the claimantlandowner shall not be held entitled to the benefit of the provisions of Section 23(1A) of the Act.

In view of the aforesaid discussion, we do not find any merit in the appeals, either filed by the Trust or by the claimants, therefore, dismiss the same accordingly. However, there shall be no order as to costs.

Appeals dismissed.