(2003) 08 P&H CK 0017

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 1805 of 1986

Jarnail Singh and Others — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

Date of Decision : 13-08-2003

Acts Referred:
Land Acquisition Act, 1894 — Section 18

Citation : (2004) 137 PLR 79 : (2004) 1 RCR(Civil) 699

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : V.K. Kataria, for the Appellant; S.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—The challenge in the instant Regular First Appeal is to the award dated 7.3.1986, wherein the Additional District Judge, Bathinda has awarded less amount to the appellants-claimants while passing the impugned award and not enhancing the compensation as claimed by them.

2. Vide notification dated 10.5.1979, issued u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as ''the Act''), Union of India-respondent herein, acquired a huge chunk of land alongwith the houses and tube-well etc. for setting up a Cantonment at Bathinda. In this case, the dispute is about the assessment of the market value of the constructed property of the appellants i.e., house and tube-well. The Land Acquisition Collector vide his supplementary award dated 16.12.1982 assessed the market value of the acquired property at the rate of Rs. 38,733/- on the basis of the report of K.S.Gonddhara(Ex.RWt).

3. Dissatisfied with the aforesaid valuation of their property, the appellants sought reference u/s 18 of the Act. The learned Additional District Judge, Bathinda vide his award dated 7.3.1986 assessed the market value of acquired property of the appellants at Rs. 39,959/- and thus enhanced the market value of the acquired property to Rs. 1226/- over and above what was awarded by the

Land Acquisition Collector. The learned Additional District Judge assessed the aforesaid market value of the property of the appellants by awarding 10% enhancement of the difference of the two valuation re-ports (Rs.12,260/- i.e. Rs. 1226/-) Ex.A2 submitted by Shri H.S.Virdi, retired Sub Divisional Engineer of PWD B&R Department and Ex.RW1 submitted by Shri K.S.Gond-hara, Sub Divisional Engineer Central Works Sub-Division, Bathinda. In the report Ex.A2, market value of the acquired property was assessed as Rs. 51,402/-. But the learned Additional District Judge assessed the total market value of the property of the appellants to Rs. 39,959/-. The learned Additional District Judge also awarded 30% solatium on the aforesaid enhanced amount u/s 23(2) of the Act, 12% additional amount u/s 23(1A) of the Act and interest at the rate of 9% from one year and 15% for subsequent years u/s 28 of the Act.

4. Feeling dissatisfied with the aforesaid award, the appellants-claimants have filed this Regular First Appeal in this Court. It is contended by the learned counsel for the appellants that the learned Additional District Judge should have relied on the report of Shri H.S.Virdi (Ex.A2) while awarding compensation to the appellants and thus erroneously awarded 10% enhancement of the difference of the two valuation reports Ex.A2 submitted by Shri H.S.Virdi, retired Sub-Divisional Engineer of PWD B&R Department and Ex.RWl submitted by Shri K.S.Gondhara, Sub Divisional Engineer, Central Works Sub Division, Bathinda.

5. The learned counsel for the appellants submitted that the formula adopted by the learned Additional District Judge for granting the enhancement was totally contrary to law. There was no justification for awarding only 10% of the enhancement of the difference of the two valuation reports particularly when the learned Additional District Judge had himself observed that the report submitted by Shri H.S.Virdi was detailed one and whereas the report submitted by Shri K.S.Gondhara was not that detailed. The learned counsel for the appellants further submitted that this Court in Union of India v. Bachan Singh 1989(2) RLW 140, which pertains to the same acquisition, has awarded compensation to the claimants for their, acquired properties on the basis of the market value assessed by Shri H.S.Virdi in his report. It has held by this Court that no deduction would be made from the valuation made by Shri H.S.Virdi regarding the super-structures of the land owner-claimants. In view of the said judgment, learned counsel for the appellants submitted that there was no justification with the learned Additional District Judge not to grant the compensation of the acquired property of the appellants as per the valuation made by Shri H.S.Virdi in his report.

6. On the other hand, Shri S.K.Sharma, Sanding Counsel for the Union of India could not support the award made by the learned Additional District Judge in view of the decision given by this Court in Bachan Singh''s (supra).

7. After hearing the arguments of the learned counsel for the parties and perusing the record of the case, I find force in the submission made by the learned counsel for the appellants. In my opinion, the learned Additional District

Judge has absolutely given no justification and reasoning in not assessing the market value of the acquired property of the appellants on the basis of the report of Shri H.S.Virdi. Merely because the expert produced by the respondent has assessed the value of the super-structure of the appellants at a less value, the learned Additional District Judge was not justified in determining the market value of the acquired super-structure on the basis of percentage of difference between the aforesaid two reports. Once in the similarly situated case, this Court, has determined the market value of the super-structures (houses) of the owners/claimants on the basis of the report of Shri H.S.Virdi, the report of the same person cannot be disbelieved where the market value of the tube-well was assessed by him. This Court in Bachan Singh''s case (supra) has categorically held that no deduction can be permitted on the valuation report submitted by Sh. H.S.Virdi. In view of this, I am of the opinion that the appellants are entitled to the compensation of their super-structures on the basis of valuation report submitted by Shri H.S.Virdi.

8. In view of the above, the appeal filed by the appellants is allowed and the appellants-claimants are held entitled for the enhanced amount of Rs. 11,083/- for the acquired property over and above what has been awarded to them by the Court below. On this enhanced amount, the appellants shall be entitled to 30% solatium u/s 23(2) of the Act, 12% per annum additional amount on the enhanced market value of the acquired land u/s 23(1-A) of the Act for the period commencing on and from the date of the publication of the notification u/s 4 of the Act to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier; and interest at the rate of 9% for one year and 15% for subsequent years till payment u/s 28 of the Act.

9. In case the appellants-claimants have not paid the requisite sufficient court-fee on the amount enhanced by this award, they are allowed three months time to make up the deficiency in court-fee. In case of default, the claim of the appellants would be taken to have been decreed only to the extent to which they have already paid the court-fee.